The Case for Family Law Reform

Why do we remove fit parents from the lives of children every day?

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Executive Summary

The purpose of this report is to give the General Assembly of Ohio a clearer view of the scope of the problems that caused by our current "shared parenting" law. The information contained has been accumulated of many years and through research done through number Ohio reports and various Federal Government information sources.

We need to acknowledge those State of Ohio legislators that have worked with us in attempts to correct these problems throughout the years and the numerous parents and children that have stepped forward to tell us about the problems that this law has caused them.

This is a complicated and expensive issue for the State of Ohio that can easily be fixed.

What we looked at

We have provided a brief history of events through history that have influenced the laws as they exist today.

Case law that has influenced the history, much of which has never been fully incorporated into our statutes is discussed. Also discussed is some case law from the Ohio Supreme Court and what we have yet to hear from the Court on.

We will discuss the affects of this law on Society and the attitudes that prevail through the same.

We will discuss the effect of this issue on life in Ohio and why it is possibly the single most costly issue other than joblessness and poverty that this state currently faces.

We examine the effects of the State in areas that many have failed to realize this issue impacts.

As we close we will make our case as to why the proposed changes with SB144 and HB253 GA 129th were the best solution for the State of Ohio, now and into the future.

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Why do we remove fit parents from the lives of children every day?

A single question that has yet to be answered by any legislature nationally, yet society have for years cried about the loss of fathers from the lives of the nation's children. A much talked about national problem that needs to be addressed by the individual states by the updating of their laws that deal with how the courts handle post divorce custody issues within the family.

This area of law has gone through many changes over the course of time and I think that it is best that we take a brief look at the historical perspectives that have transformed over time to better understand what has happened and why we need to rethink our approaches.

A Brief History and Some Influences

In the early part of the twentieth century, fathers were presumed to have "ownership" of their children based on the Common Law principles of that time. During this time, women and children were "chattel" of the male head of household.

As the Suffragette movement took hold in this country and woman were given the vote and recognized as more than an object for ownership by the male, shifts happened within the thinking and attitudes towards females having custody of the child should there be a breakup of the family unit. With the adoption of the "tender years" doctrine, and later the "primary caregiver" doctrine, custody laws overwhelmingly began to favor the mother. A far distance from past thinking that had carried through until the early 20th Century.

As the Civil Rights Movement gained strength and eventual acceptance, the courts began to strike down these doctrines in favor of equal protection statutes, but the attitudes of the courts continued to favor one parent over the other, usually the mother. This attitude is supported in the statics that have remained constant over the past 20 years and show that the custody awards have continued at a rate of 85% towards the female, even with dramatic increases in female employment that have taken place since the 1970's.

Lost and often forgotten is the impact that "No-Fault Divorce" has had on the family makeup of this country. The first of these laws in this nation took effect January of 1970 when then-Governor Ronald Reagan signed California's no-fault divorce law. I had an opportunity to speak with Dr. Peter W. Schramm of the Ashbrook Center about this briefly. He conveyed that Reagan during his Presidency came to regret his decision in signing and supporting that legislation. President Reagan felt that he had hastened the destruction of the American family by doing so.

In thinking on this and trying to understand why one of the most conservative of all of our Presidents would come to this conclusion on something like this I have to agree and disagree to a point. I see why he would have supported this type legislation as when his marriage to Jane Wyman came towards an end and both wanted out, they were forced at that time to create a "fault" to end that broken relationship. That unfortunately placed their children in the middle of an adult problem rather than isolating them from it. With "no-fault" the parties could simply agree to go their separate ways. While this did remove the children from the battleground, it did hasten the destruction of the family as families became much less willing to work their problems out for the sake of the family.

What could not be foreseen by Reagan were the changes that would come as the male took over a more hands on approach to raising children as more women entered the workforce through the years. Fathers, prior, had not taken on the roles of diaper changing and cooking that they do so now with ease and no second thought. As I stop to think about my own father's role within the household it was hands off as my own mother was a stay at home mother until she joined the workforce as a teacher. My Dad's role changed then as he was now more hands on and lending a hand with what had previously been considered "Woman's work". For me, that division of woman's and men's work was gone from the household as I became a father and society lost it views on old "traditional" family roles. I often reflect back as I recall my dad telling me that I would "make a good wife someday" because I had learned to cook, clean and become self-sufficient as I began my own adaptations and adjustments to those changing roles.

It is this change of roles that is often missed by many as they wonder why fathers have sought out a larger role in the lives of the children post marriage relationship break up. It is the role of fathers that is not considered in the primary caregiver or tender years doctrines and thought patterns which still are so ingrained within the thoughts of Ohio Judges, despite our so-called shared parenting laws and a supposed equal positioning, that Ohio's laws try to give the individual parties. This is where the real destruction of the American family lays in this country. While Reagan was correct that a better way was needed so families could dissolve a bad relationship, the changing times and attitudes of the courts and law have not caught up to those roles changes yet.

It is time that we as a State revamp our thinking on this and set a new course and fully recognizes this societal change and modernizes our laws. It is with this that I make the case for true reform of family law and a change to a system that recognizes that every fit parent should be fully engaged.

History of Ohio Law

Ohio's shared parenting law was enacted at a point well before 1990 at about the same time as Ohio adopted the no-fault divorce principles (also well before 1990) . Since that time has seen little revision other than changes brought about to assist the many Ohio

active duty military members with issues that they have experienced due to deployment. Even those changes were slow to come full circle and in two steps with the last phase coming this past session with the passage of HB121.

While we have seen three separate attempts to change the custody award sections of this law since the 125th General Assembly with HB232, HB688 126th General Assembly and then lastly during the 129th General Assembly with the introduction of identical bills in the House (HB253) and Senate (SB144) we have yet to see this area of law updated to bring it to more modern standards and to bring it up to date with current case law that has come in since that time.

Was there a problem within HB232 when it was introduced? That answer is yes. When I worked on the language of HB232, we had written that bill with proper legal standards. That bill was then sent to the Attorney General Betty Montgomery's Office for checking. It was found later that she "shopped" that bill and was encouraged by the Judge's Association and the Matrimonial Lawyer section of the Ohio Bar Association to change the term of "equal custody" to "substantially equal". When the Judicial Impact Report came on that bill the judge objected to that term even though they were the ones that insisted that it be placed in the bill. The other problem that existed was the section that became known as the "Missouri Access Amendment". This was supposedly to force the courts to act in a fairer manner and with expediency during contempt proceedings. The judges objected saying that contempt proceedings were handled as quickly as possible and with the fairness that they were required to hold to under the law. Despite knowing this and with more than 3 years passing, the needed changes were not made before the introduction of HB688 in the 126th General Assembly.

Since that time I have worked to correct these known problems within the language and to bring those bills to what became SB144/HB253 which were introduced during the 129th General Assembly. I was careful to bring about a standard of consistency to this section of Ohio's law which brought it up to the standards reflected due to major United State Supreme Court decisions that affect this area of law and changes that were made by the Ohio General Assembly. Presently there is a proposed bill that has been vetted and approved by LSC that is an update of the last introduced bills that that has not been introduced. This proposal was done to bring more consistency statewide and to correct some language based on case law from several Appellant Districts.

Reality is that Ohio's law is greatly out of kilter with the changes that have happened within the courts of this nation. We need to respect those decisions and bring our legal standards up to date with them. By doing this, we will ease many of the problems that families have when they become involved with the Courts in these matters. Doing so will also ease the extreme congestion that exists with Ohio's Domestic Relations, Juvenile and Family Court Systems of this state by creating judicial economy that will save both the State of Ohio and every county in this state significant money . Conservatively I expect to see Court administrative costs drop by over 50% within three

(3) years when we use statistics of the number of cases involved based on data provided by the Ohio Supreme Court in their last report of new filings of 2011 based on their classifications of new filings for that year[1].

Significant Case Law

While we have seen some significant case law decisions since the effective date of Ohio's law nothing has been done to update language within our law. The reality is there are guidelines that have been delivered thru case law that need to be codified to ease any litigation that arises for cases and reduce conflicting decisions that do happen on a regular basis. When those conflicts occur, the case is headed to Appeals and the cost of litigation has gone up significantly for the parties involved and adding to the costs for the state and counties of Ohio.

As I go through these I will note some key case law decisions that have been used improperly and some long missing decisions within Ohio's Courts. Unlike even those that are attorneys in this area, I am proactive in reading the decisions that come from the various Courts of Appeals and the Ohio Supreme Court and have a constant watch on United States Supreme Court Decisions. I take the time to read not only the decisions but the briefs that got us to the final decisions of the court where possible.

TROXEL *et vir. v.* GRANVILLE

While this case gave guide to every state on the handling of third party relationships and visitation rights for grandparents, it did raise a very old case that has been grasped and comes worthy of attention that is somewhat lacking in the thinking of the courts and brings forth many areas of attention that are lacking within Ohio law.

> *First, the Troxels did not allege, and no court has found, that Granville was an unfit parent. That aspect of the case is important, for there is a presumption that fit parents act in the best interests of their children. As this Court explained in Parham:*
> *"[O]ur constitutional system long ago rejected any notion that a child is the mere creature of the State and, on the contrary, asserted that parents generally have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations. . . .* ***The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions. More important, historically it has recognized that natural bonds of affection lead parents to act in the best interests of their children." 442 U. S., at 602 (alteration in original) (internal quotation marks and citations omitted).***

[1] Ohio Supreme Court, 2011 Statistics http://www.supremecourt.ohio.gov/Publications/annrep/11OCS/default.asp

That last line is one that is all too often forgotten as parents dissolve their marital contract, not forgotten by the parents but forgotten by the Courts and not protected by Ohio law. A family is still a family even though the marriage contract is broken. Severing that commitment does not make a father a non-parent nor does it make a mother a non-parent; they will forever be a parent to the child that they have created together. They remain parents to their children in the same manner as a parent in a married relationship does.

Does Ohio law recognize this presumption?

> **3109.401 State policy on parent and child relationship.**
>
> (A) The general assembly finds the following:
> (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;

Yet in the next line of the same statute Ohio law conflicts its previous statements:

> (3) That the courts, when allocating parenting functions and responsibilities with respect to the child in a divorce, dissolution of marriage, legal separation, annulment, or any other proceeding addressing the allocation of parental rights and responsibilities, must determine the child's best interests;

If the parent child relationship is fundamentally recognized then why are we allowing the courts (a third party) to make the determination of what is in the best interest of the child, does not the decision of ***Parham*** already instructs us that it is the ***parents,*** so long as they are fit, that do act in the best interest of the child? This is but the beginning of the reason that we must update Ohio law.

SANTOSKY v. KRAMER, 455 U.S. 745 (1982)

Santkosky, while prior to the introduction of Ohio's shared parenting law gives all courts the guidance and the evidentiary standard that they should be following when they terminated a parent's rights to their child. What this case told the Court is that a evidentiary standard of clear and convincing evince should always be used when considering the termination of a parent's rights. At any time that a court reduces a parent's rights and access to their child, they are terminating, at least in part, a parent's rights. This is because they no longer have the same right to their child that they had prior to that order being issued.

Ohio uses an evidentiary standard of preponderance rather than clear and convincing evidence in dealing with custody issues which means that the "I think" rather than "I know" is in place when dealing with the arrangements. We expect that the Court should err on the side of caution when making these decisions but by use of the weaker of the two standards of review makes no sense. When we as parents make a decision for our children or our family we will always gather the best information before we commit to that decision.

For years the use of this preponderance standard has done irreparable harm to numerous children throughout this state. I have not been shy in the past about the harm that this has caused and will not now.

> ***"The discretion of the a judge in the family court is so broad that if they write an order stating that you must have your child play in the middle of the freeway during rush hour, you are stuck with that."*** A statement made during testimony before Committee in support of HB232 in 2003 that still holds true today.
>
> ***"If you come in here complaining that you are being denied seeing your children again, I am going to make sure that you never see them again and throw you in jail."***
> Told to one of the fathers in what became known as the "Kenmore Kids Case" in Summit County. Father was repeatedly denied access to his boys by the mother. The boys were found wandering down a busy Akron street barefoot in the middle of the night.
> The mother in question was charged with child abuse and ordered no contact after it was discovered that she and her lesbian lover had locked these two boys and another boy in a room, fed them cat feces while treating a sibling sister royally as they trained her to become a lesbian. Mother and her lover were sentenced to prison and ordered to have no contact with the children.
> The father of the girl had also been threatened in the same manner when he brought complaints of abuse to the court in this case.
>
> ***"I am not accepting that Guardian Ad Litem report, no father is that good."***
> Father had raised his two boys for 5 years after the mother walked out and had no contact for the same period of time. Mother lived in North Carolina, filed for a change of custody and the court granted it. On the father's first trip to "visit" with his boys he had to stop and get a hotel room and bathe the boys as they smelled so bad he could not stand to be in the car with them and they were covered in fleas.
>
> ***"Oh kitty, what are we to do with these people?"*** magistrate as he stroked his dead stuffed cat that sits on his trial bench.

In this case the same magistrate has ordered that neither party leave the jurisdiction of the court and issued a restraining order to that affect. Mother moved from central Ohio to Detroit area and was not held in contempt for doing such.

The child remained on a week on week off schedule and was attending two different schools in two different states per court order.
Decision comes in on the divorce and all debt was given to the father and custody was given to the mother. When the father filed for a stay of that decision pending appeal, the court denied the stay and then on its own reduced the father's visitation even further.

"The <u>child</u> is to make sure that her father does not drink while he has the child during his visitation."
The child was 8 years old at the time and the father was an illegal immigrant that was an admitted alcoholic. He had no driver's license. Had the local prosecutor and police chief refused to help when I raised the issue with them directly, this child could well have been killed.

These are a few of the examples that have come to me over the years. With a proper evidentiary standard we will protect our children from the harm that has befallen others before them. Judges do not lose their discretion when the evidentiary standard is changed; they get a clearer idea of what they should being doing in making considerations that will affect a child for the rest of their life.

In looking at Ohio's two controlling cases **Boyer v Boyer** (1976) and **in re Perales** (1977), I find something that is very interesting. Unlike attorneys dealing within this area of law, I have had the opportunity to read all the briefs associated with both these cases. While these cases have been used to control the award of custody between two fit parents, neither case involved a custody matter between two fit parents.

Has the Ohio Supreme Court ever given the Courts guidance on how to award custody between two fit parents? To this date, no. We have been told how to handle this and what the requirements are for breaking a "shared parenting order" in Fischer V Hasenjager (2007), but we have yet to hear from the High Court on how custody decisions should be handled when both parents are fit and equally situated. A decision of that nature would solve this complex matter but one has never come. Personally I suspect that this is because to prove abuse of discretion, the bar is set so high that cases never make it past the first hurdle of the Court of Appeals and that no one has ever put that ***perfect*** question out that would decide this once and for all.

Just because we have been doing it this way for twenty plus years of Ohio's Shared parenting law does not mean that we have been doing it right.

Statistics to Consider

Statics bear out the fact that the courts have failed to protect the parent/child relationship and this fundamentally recognized natural protection that we as parents provide for our children. When we look at United States Census Bureau statics on single family head of household homes the numbers tell a tale of what we are doing to the children of our Nation and of the State of Ohio. Currently, among single parents living with their children, less than 18 percent are men. Through the years I have had the luck to look at some data on custody in a couple counties across the state. I was able to view data from a study done on Champaign County some years back that showed that custody went to the mother nearly 100% of the time. In recent months I was asked to go over records from Lorain County by a local television station. I looked at 600 active cases and did not find a single case where the father was awarded custody from the beginning of the case. This study also showed an alarming number of bankruptcies and foreclosures that took place during the pendency of the divorce action.

While the Domestic Relations Courts will say that they award "shared parenting" in the majority of the cases before them, that term should not be confused with equal legal and physical custody which is what was enjoyed prior to the dissolution of the marital relationship. A recent set of guidelines released by the Ohio Supreme Court showed a strong tendency to willfully limit parental involvement simply because of the age of the children involved. These guidelines, *Planning for Parenting Time – Ohio's Guide for Parents Living Apart*[2], are used by many of the family courts across the State of Ohio and show what can best be labeled as a form of social engineering that should not continue because of their continued lean towards the reduction of parental involvement of fit parents. To an end these policies have damaged more than parents in Ohio but also the children, future society, the Ohio economy and education, as I will discuss further on.

These guidelines suggest that a non-custodial parent only be allowed to see a newly born child as few as 6 hours per week when it at the same time recognizes that this is a critical bonding time for the parent- child relationship. While these guidelines "step up" the non-custodial parents time with the child as the child ages, that critical parent child relationship has already be severely damaged for no legal reason other than the discretionary powers of a third party judge.

Looking at the recommendations that were made within this report and applying them to the situation at hand for myself when I divorced, I would have only been allowed to see my son for two over nights per week. The reality was that my son was seeing me every night and every day prior to the dissolution of my marriage and because I was able

[2] That report can be found at http://www.supremecourt.ohio.gov/Publications/JCS/parentingGuide.pdf

to obtain “equal custody” that time was still reduced to 7 days out of a 14 day period which worked to enhance his future development.

That type of arrangement is allowed within Ohio’ current scheme but it is not guaranteed as even a starting point. Frankly at the time of my divorce I was told by my attorney that my time would be reduced to next to nothing because “Summit County does not award custody to males” and Ohio’s “shared parenting law” was in full affect at that time. This raises the question that I have posed for the past couple years, ***“Why do we remove fit parents from the lives of their children every day?”*** Is it because the Courts have remained stuck in outmoded thoughts ***or*** is it because we have a current system of law that punishes fit parents for no wrong doing?

When we look at some more statistics in this area we have many other factors that we need to look at to see the depth of this problem on society in general and the extreme price that we pay as taxpaying citizens every day. As we begin the budget process this year we need to be extra sensitive to the effects of bad law on the way that money is spent within the State of Ohio. The following are some general statistics that need to be considered:

- **Compared to living with both parents, living in a single-parent home doubles the risk that a child will suffer physical, emotional, or educational neglect. The overall rate of child abuse and neglect in single-parent households is 27.3 children per 1,000, whereas the rate of overall maltreatment in two-parent households is 15.5 per 1,000.**
- **Daughters of single parents without a Father involved are 53% more likely to marry as teenagers, 711% more likely to have children as teenagers, 164% more likely to have a pre-marital birth and 92% more likely to get divorced themselves.**
- **Adolescent girls raised in a 2 parent home with involved Fathers are significantly less likely to be sexually active than girls raised without involved Fathers.**
- **43% of US children live without their father** [US Department of Census]
- **90% of homeless and runaway children are from fatherless homes.** [US D.H.H.S., Bureau of the Census]
- **80% of rapists motivated with displaced anger come from fatherless homes.** [Criminal Justice & Behavior, Vol 14, pp. 403-26, 1978]
- **71% of pregnant teenagers lack a father.** [U.S. Department of Health and Human Services press release, Friday, March 26, 1999]
- **63% of youth suicides are from fatherless homes.** [US D.H.H.S., Bureau of the Census]
- **85% of children who exhibit behavioral disorders come from fatherless homes.** [Center for Disease Control]

- **90% of adolescent repeat arsonists live with only their mother.** [*Wray Herbert, "Dousing the Kindlers," Psychology Today, January, 1985, p. 28]*
- **71% of high school dropouts come from fatherless homes.** [*National Principals Association Report on the State of High Schools*]
- **75% of adolescent patients in chemical abuse centers come from fatherless homes.** [Rainbows for all God's Children]
- **70% of juveniles in state operated institutions have no father.** [US Department of Justice, Special Report, Sept. 1988]
- **85% of youths in prisons grew up in a fatherless home.** [Fulton County Georgia jail populations, Texas Department of Corrections, 1992]
- **Fatherless boys and girls are: twice as likely to drop out of high school; twice as likely to end up in jail; four times more likely to need help for emotional or behavioral problems.** [US D.H.H.S. news release, March 26, 1999]
- 75% of all adolescent patients in chemical abuse centers come from fatherless homes – 10 times the average.

All the following are for custodial parents:

- Single mothers who work less than full time: **66.2%**
- Single fathers who work less than full time: **10.2%**
- Single mothers who work more than 44 hours per week: **7.0%**
- Single fathers who work more than 44 hours per week: **24.5%**
- Single mothers who receive public assistance: **46.2%**
- Single fathers who receive public assistance: **20.8%**
- *Source: Technical Analysis Paper No. 42, U.S. Department of Health and Human Services, Office of Income Security Policy, Oct., 1991 Authors: Meyer and Garansky*

Child Support

- Fathers with joint custody pay **90.2%** of all child support ordered.
- Those with visitation rights pay **79.1%.**
- Those with no access/visitation pay only **44.5%**

Source: Census Bureau report. Series P-23, No. 173

- **66%** of all support not paid by non-custodial fathers is due to inability to pay.

Source: U.S. General Accounting Office Report, GAO/HRD-92-39FS, January 1992

- Custodial mothers who receive a support award: **79.6%**
- Custodial fathers who receive a support award: **29.9%**
- Non-custodial **mothers** who totally default on support: **46.9%**
- Non-custodial **fathers** who totally default on support: **26.9%**

(Data obtained by asking custodial parents)

- Non-custodial **mothers** who pay support at any level: **20.0%**
- Non-custodial **fathers** who pay support at any level: **61.0%**

(Data obtained by asking custodial parents)

Over the course of the last couple years I have continued to research this subject and look for some numbers that suggest just what the cost is to the State of Ohio. With data and the expanse of areas that we have affected, it is difficult to pin point an exact number. I did find a report that the Ohio Fatherhood Commission that placed the cost of fatherless homes in Seneca County at **$50,652,464.00** per year (*January 25, 2011*). Based on the population of Seneca County (56,745 - *2011*) that places a burden of **$892.62** per person in that county. If these costs are presumed to be consistent throughout that state, based on the latest census, then we have a **$10.3 Billion** per year problem on our hands.

This does not include the cost of operation of the family court system within the state or that of the county.

In a conservative estimate, if an update of the current custody scheme used in Ohio yielded savings that were only 1/3 of the $10.3 Billion a year as mentioned above, then we could expect to save over $3 Billion per year.

This does not include the cost associated with the operation of the courts in Ohio and I want to take the time to show some numbers culled from the Ohio Supreme Court's last report on new filings within the various courts of the State. If we were to apply the standards of last session's SB144 or HB253 to those statistics we would see as many as **422,000 cases in Juvenile and Domestic Relations Court** go to a more cost effective and low court involved mediation or negotiation rather than the more expensive litigation that is currently in place. To explain the scope of the issue and how big and burdensome the family court system of Ohio has become, the Common Pleas Courts of Ohio had a total of **407,000** new filings for the same period of time.

This becomes a cost savings for the counties, the State and the individual parties involved through judicial economy. This means that the parties will be able to work directly with each other to develop a plan that is best for their family rather than litigating the matter in front of a court that knows little about them. They will be able to develop a plan that will be right for their family and their family's future. Most importantly it will be right for the children involved.

The Cost and Impact of the Law

As I have studied various different aspects of this problem through personal observation, experience and in talking with numerous organizations that have looked at this problem from other perspectives I see more of the scope of this problem than the usual person. I want to take you through some areas that you may not even consider

that the problem of divorce and the effects on children and the reduction of time with a both fit parents have on their life. This is one of the most complicated causes and effects issue that society and the State of Ohio faces. This touches more people than just those that have cases before the court.

Yet this area of law may well have not been updates since the 1970's and remains without major revisions to bring it to modern standards of case law and societal needs.

Education

Education of our children is one on the most important factors that we face as a state and as a parent. Without a well rounded education the benefits that a child will bring to society are lost and the likelihood that that children will end up being a burden to society in the future is greatly increased.

Father Factors in Education

- **71% of high school dropouts come from fatherless homes.** [*National Principals Association Report on the State of High Schools*]
- **75% of adolescent patients in chemical abuse centers come from fatherless homes.** [Rainbows for all God's Children]
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- 85% of youths in prisons grew up in a fatherless home. [Fulton County Georgia jail populations, Texas Department of Corrections, 1992]
- **Fatherless boys and girls are: twice as likely to drop out of high school; twice as likely to end up in jail; four times more likely to need help for emotional or behavioral problems.** [US D.H.H.S. news release, March 26, 1999]
- Children with Fathers who are involved are 40% less likely to repeat a grade in school.
- Children with Fathers who are involved are 70% less likely to drop out of school.
- Children with Fathers who are involved are more likely to get A's in school.
- Children with Fathers who are involved are more likely to enjoy school and engage in extracurricular activities.
- 75% of all adolescent patients in chemical abuse centers come from fatherless homes – 10 times the average.
- In general, males are better at teaching math and science while women are better at social science and language arts.

With the roll out of the Governor's School Funding scheme and at present we are waiting to the next completed bi-annual budget. One of the major numbers that I will be looking at is how much we are asked to spend on remedial education for students entering Ohio's Colleges and universities. Over the past two years we have heard from

Dr. Gordon Gee and other university presidents on this subject as they have pleaded with the General Assembly for more money for remedial math and science programs. The question that comes to my mind every time I hear this is how much of this problem is caused by the lack of father involvement while these children are in our primary schools? It is a question that I have discussed with teachers and we all come to the same conclusion that I am likely right in my thoughts that the lack of male involvement is a part of this problem.

There is no doubt that we have an education problem in Ohio. As we look at the factors above, common sense says that it will take more than changing some programs in our schools to correct the downward slide that we have experienced across Ohio. We have seen the quality of our schools fall at a time when technology and the understanding of math and science is most important to good paying jobs and sustainable employment in a high technology future in Ohio. As much as we long for the old days of factories producing goods from raw materials on the sweat of hard working men and women, even those jobs have changed as much of what was done by hand is now done with the push of a button. Machine shops that were filled with people running a single machine all day are now automated to a point where a single person can run multiple machines at the same time. But doing that takes skills in math, an area we are failing in greatly.

Can we blame all our educational problems solely on fatherless homes? No, but as I have said common sense tells us that it is a factor. When you look at the areas where we are failing and who best influences those areas, make your own conclusion.

Business

This is an area where few have taken a look as I have. As a business owner and manager for various businesses I have gotten insight into how Ohio's family law system affects businesses every day. I have raised a few eyebrows when talking about this and what the affect would be as far as a benefit to the State of Ohio by passage of this type legislation.

As someone enters the family law system in Ohio at present they can expect to be subjected to numerous hearings and should that case not be resolved a protracted trial. Each hearing will likely mean a day off work. For the party that will mean a vacation day used that also has an effect on the business. The party may get paid for that day but that is an expense for the company that will need to arrange for a replacement worker for the day which likely means someone is getting overtime. With a replacement worker brought in the normal hourly rate has now become 2 ½ times what that business pays (regular worker plus replacement at overtime) which increases the cost of doing business. While end of year figures will see this noted as a cost of doing business it does result in a reduction in the profits which that business will make. That reduces the taxes that the business pays to the State of Ohio. While there does exist an increase in income taxes, the added expense to businesses decreases the taxes on businesses.

For other businesses that do not bring in replacement there is a loss of productivity for that day. One example that comes to mind on this was when I worked in a 50 man machine shop. Every machine ran every day to produce parts. When someone had to take off for a court date because of some petty issue within DRC, their machine sat idle. There were no parts produced (loss of profits for company), worker "burned" a vacation day (paid), and Company **lost** profits from production and the wages of worker. The State lost income from taxes on both business profits and personal income.

When a worker has to use their vacation time, there is another affect on how they spend their vacation dollars. By having to use their vacation time for court hearings, the worker would have spent on a real vacation which would produce income down the road to others. Also the dollars spent because of the continued litigation on legal fees produce a reduction in spendable dollars that may be spent on home improvements, new autos and other pleasure items which produce sales tax dollars for the state. It is a cascade of addition dollars lost by the state that has reach into the pockets of those that have never set foot within a courthouse.

Using figures that I showed before about the number of newly filed cases that would be affected by the changes we are proposing if we look at this as lost revenue on income.

Using the last Ohio Supreme Court Statistics:

New cases	422,000
X2(parties)	844,000
Lost time each hearing	6,752,000 hours
X4 (number of hearings)	27,008,000 hrs. per year
Average wage $20.00 hr. (US Labor and Statistics[3])	$540,016,000 per year
Lost income tax (Average wage x 4 days)	$105.19 per person
Lost income tax per year	**$88,780,697**

These numbers pertain to State income taxes only and do not include the local income taxes which generally run in the range of 2%. Also missing is any attempt to calculate additional dollars generated by spendable dollars which support other jobs in the downstream and vacation/leisure industries of Ohio. That lost income number is likely to be very conservative in nature.

With $540,016,000 per year in lost revenue that businesses write off as an expense, as pointed out before, I hope that you see why this costs Ohio in more ways than you have considered.

[3] US Labor and Statistics http://www.bls.gov/oes/current/oes_oh.htm#00-0000

Society

When we get to the effects on society sometimes I just shake my head. There is not a day that goes by when some organization somewhere is not crying about the effects on children caused by fathers that do not want to be involved. That is far from the truth and far from an accurate assessment of what is really going on in society. For too many of these organizations their definition of father involvement is "how much money are they paying" instead of how much one on one physical contact do they have with their children and what is their daily involvement.

A little over a year ago I was invited to attend a "start-up meeting" in Lorain County for a county wide fatherhood initiative. In attendance was a member of the National Fatherhood Initiative as well as a couple members of the Ohio Fatherhood Commission. I sat and listened as it was presented to all that fathers do not want to be involved with their children and we need these programs to get them involved. Yet not a single person other than a friend of mine and me had the guts to really identify the problem.

The problem is not the fathers; the problem is bad law that willfully reduces their role in spite of the fact that they are a fit parent by all legal definition. To be frank, what I observed was nothing but a bunch of charitable organizations with their hands out looking for money to continue talking about the problem rather than working towards a solution. I know that may sound harsh but it is a very honest assessment of what I have observed of not only the National but the Ohio Fatherhood Commission. Talk has gotten nowhere in solving a problem that bad law and a poor attitude towards fathers has created.

While this comment may not sit well with the members of the General Assembly that have chosen to support this Commission and with the Commission itself, the reality is that there has been nothing done towards solving the problem even though it has been recognized and documented by OFC. On January 24, 2007 the Ohio Fatherhood Commission issued a detailed report[4] to incoming Governor Strickland in which they expressed the need for major reforms within family law and made a call for equality on custody decisions. Yet when I called this report to their attention prior to the introduction of SB144 129th GA they knew nothing of it. What each of you should find disturbing about that is that leadership within the Commission had not changed nor had it membership. I have to question if the intent of the Commission is to fix the problem or simply talk about it.

[4] The report was removed from State of Ohio websites shortly after I discovered it and made note of it. It can be viewed at http://www.nopeohio.org/ohio%20commission%20on%20fatherhood%20strickland-fisher%20transition%20agency%20review%20committee%20report%20revised%20full%20version.pdf

The same problems were identified in the June 20, 2001, Family Law Reform: Minimizing Conflict, Maximizing Families[5] yet little to nothing has been done to correct the problem. Mayor Frank Jackson made a statement about problems in the City of Cleveland, "***We know what the problem is, we know how to fix the problem, we just have not fixed the problem."*** Are we applying the same to known problems with Ohio Family law? Common sense tells one that we are.

As I noted before, if we apply what the Ohio Fatherhood Commission found in their study in Seneca County across the State, we have a $10.3 Billion problem that can be substantially solved by a simple change in the approaches of the state. While we know that we will not completely solve the problem of the "deadbeat parent", I stand firm in my conviction that we will put a major dent in it by making the changes in the manner that were presented in SB144/HB253 129th GA. These solutions were comprehensive in such that they addressed the problem in a manner that is best for children, mothers and fathers, be they married or never married. Even the adjustment to the way that Ohio handles child support between parents was something that was recognized and recommended during the 2009 Child support Guidelines Report to the General Assembly and they finally recognized the problem which many have currently with parenting times that are well beyond the old views of standard visitation prior to Ohio's adoption of shared parenting.

If we revisit a portion of the statistics that were mentioned before, it may help to grasp some of the impact that this problem has on society. Each point will be followed with breif information on how it affects the Ohio Budget.

- Compared to living with both parents, living in a single-parent home doubles the risk that a child will suffer physical, emotional, or educational neglect. The overall rate of child abuse and neglect in single-parent households is **27.3 children per 1,000**, whereas the rate of overall maltreatment in two-parent households is 15.5 per 1,000. [Higher costs of operation of Children Protective Services throughout the state]
- Daughters of single parents without a Father involved are **53%** more likely to marry as teenagers
- Daughters of single parents without a Father involved are **711%** more likely to have children as teenagers [Higher Medicaid and Food Stamp costs]
- Daughters of single parents without a Father involved are **164%** more likely to have a pre-marital birth and **92%** more likely to get divorced themselves.[Higher Medicaid and Food Stamp costs]
- 80% of rapists motivated with displaced anger come from fatherless homes. [Criminal Justice & Behavior, Vol 14, pp. 403-26, 1978] [Higher Court and Prison costs]

[5] June 20, 2001, Family Law Reform: Minimizing Conflict, Maximizing Families, http://www.supremecourt.ohio.gov/JCS/taskforce/report_final.pdf

- 71% of pregnant teenagers lack a father. [U.S. Department of Health and Human Services press release, Friday, March 26, 1999] [Higher Medicaid and Food Stamp costs]
- 85% of children who exhibit behavioral disorders come from fatherless homes. [Center for Disease Control] [Higher health costs]
- 90% of adolescent repeat arsonists live with only their mother. [*Wray Herbert, "Dousing the Kindlers," Psychology Today, January, 1985, p. 28]* [Higher Court and Prison costs]
- 75% of adolescent patients in chemical abuse centers come from fatherless homes. [Rainbows for all God's Children] [Higher health costs]
- 70% of juveniles in state operated institutions have no father. [US Department of Justice, Special Report, Sept. 1988] [Higher Court and Prison costs]
- 85% of youths in prisons grew up in a fatherless home. [Fulton County Georgia jail populations, Texas Department of Corrections, 1992] [Higher Court and Prison costs]
- 75% of all adolescent patients in chemical abuse centers come from fatherless homes – 10 times the average. [Higher health costs]

With the State of Ohio in the middle of creating the next bi-annual budget each members of the General Assembly is acutely aware of the massive task it is to control the expenditures of this state. The "fatherless" home has an impact into many of those costs. Each and every department within the state is now fighting to gain additional funds to maintain their programs, many of which could be reduced or eliminated totally with a legal change such as this.

If we take the Courts of Ohio and look at the impact on them, based on the statistics of the last Ohio Supreme Court Report[6] on new filings, based on the clarifications that they used, we will see 422,000 cases go from extensive litigation to mediated agreements between the parents involved. That will have a tremendous workload reduction for the Courts in an over burdened area of law that has placed many parents in stressed situations that are totally unnecessary.

As an example I am going to explain what a close associate of mine went through because of the current law. RE has three children that range from junior high school through college age. At the onset of the proceedings he was removed from the household with nothing but the clothes on his back. RE was the example of a perfectly fit father than was very active in the lives of all three children, assisting them with school to coaching the sports activities of the boys in hockey. All he wanted was to remain and active and equal part of their lives.

[6] Ohio Supreme Court, 2011 Statistics
http://www.supremecourt.ohio.gov/Publications/annrep/11OCS/default.asp

Over the course of a 3 ½ years of litigation RE spent $250,000 in legal bills which in essence drained his ability to pay for the college educations of his children. He lost a home to foreclosure before making his first appearance in court that was valued at $500,000. He was forced into the bankruptcy of his company which had $11 Million in managed assets.

After all the litigation the case was settled and he and his wife have equal legal and physical custody of the children. It came at an extreme price to both parents and with undue stress placed on the children. Had the provisions of SB144 been in place, his case would have been negotiated to terms that matched the end result and likely been over and done within 6 months. Also the business would have remained thriving as it was before and the home would have never have gone into foreclosure.

While that may seem to be an extreme case to some, it is not. Those results mirror what I was able to cull from an investigation into ongoing cases within the same Lorain County Domestic Relations Court that I did for a local television station. In looking at a six month active docket for this three judge family court I found a disturbingly high number of bankruptcies and foreclosures in many cases as litigation in the case drug on. While divisions of property are equitably handled by current law often it is the decisions on the handling of our most precious asset, our children, which bog divorces to a standstill. The mysterious and often questionable decisions made by a non-family member about how often and under what terms, children will be allowed to associate with their legally fit parents lack consistency that is needed desperately. It is that lack of consistency and definition by the law that has caused the biggest societal problem that the State of Ohio and the Nation faces today.

That lack of definition has caused one of most expensive dilemmas and the last fight of marriage dissolving parents now has come to custody and control on the one asset that is truly a 50-50 contribution by both parties. The law must be changed to recognize that equal contribution and the natural presumption that fit parents act in the best interest of their children.

In a conversation with a member of the General Assembly I made the statement that this is the only court in the land where the outcome is unknown. A person can be found guilty on “feelings” rather than “evidence” and judges are allowed to “predict the future”. If they are so capable of predicting the future on children that they do not know, please answer why every family court judge is not a major lottery winner?

They have cost us too much for too long.

Unnecessary Confusion

I am well aware of some unnecessary confusion that was created by several groups that were pushing their own agendas during the last General Assembly as they lobbied for

changes to family law while SB144 and HB253 had already been introduced. I had extensive time to review those proposals and participated in a meeting with Senator LaRose which brought those groups together to discuss possible changes to those bills. Many of you met with these groups throughout the last session as well as us. To clear up that confusion it is best to look at what they were asking for and compare it to what the results would be with passage of SB144 language legislation.

Copies of these proposals will be attached as Addendums to this report.

Summit Dads

What this group was proposing was a separate law that dealt solely with how the courts handle the rights of the never married parents which as so prevalent with society today. They were asking for the creation of a DNA data base for all unmarried parents and that a child not be released from the hospital until the results of those tests.

Frankly this is an expensive and dangerous solution for parents and for the State of Ohio. The LSC analysis concurred with our analysis that the administrative hold which would cause additional costs to the state if any benefit was being picked up by the Medicaid system as well as several other problems.

Throughout the years I have heard more unmarried cry about how they are treated yet they fail to realize that they are treated no different than the married once they establish paternity. They become hung up on the section of the Ohio Revised Code that states that there is a presumption that a child born to an unwed mother has all rights to custody and control of the child. Procedurally, once paternity is established the courts have to follow ORC 3109.04 when setting a visitation order. The equal legal and physical custody requirements within SB144 are more than adequate to protect the never married at that point. In explaining this to a state representative I likened that establishment to the equivalent of a marriage license.

The proposal went so far as to set exacting visitation terms which were far from the equal legal and physical custody that would have been afforded the unmarried with SB144.

There was a tremendous amount of discussion that took place but Summit Dads did agree to support SB144 without amendment.

Fathers and Families now know as National Parents Organization

Fathers and Families, while they have a branch within Ohio, is a Massachusetts based organization. They were actively lobbying for the following changes to Ohio Law:

1. Presumption of Shared Parenting during Temporary Orders
2. Parenting Time Enforcement
3. Disabled Parents Protection Bill
4. Presumptive Child Support in Shared Parenting Cases
5. Child Support Self-Support Reserve Correction

With their proposals is it best to use their explanation of what they thought each was necessary as detailed in a letter to Senator Bacon dated August 25th, 2011. I should also note that they were told of the coming introduction of SB144 in October of 2010 and given more than ample time to comment on the language contained well in advance of introduction.

Presumption of Shared Parenting during Temporary Orders

Decades of social science research clearly establish that, except in rare cases, when parents divorce, children do best if the parents share in the day-to-day responsibilities of rearing the children. Unfortunately, current Ohio law does not encourage—and, in fact, actively discourages—true shared parenting. This begins at the stage of temporary orders, when parents first come before the court. At this time, the court designates one parent the custodial and residential parent and the other a mere "visitor" in the children's lives. This sets a destructive pattern for the family—one that is often difficult for the disenfranchised parent to change.
Oklahoma has successfully addressed this problem with a legal presumption of shared parenting during temporary orders when it is requested by one of the parents. Several years ago, then Representative McGregor asked LSC to draft Ohio legislative language modeled after the Oklahoma bill. This bill was never introduced. We seek now to get this bill introduced and passed into law. <u>We have included a copy of the bill as drafted by LSC ("LSC 125 2352")</u>.

At the meeting with Senator LaRose it was pointed out that this was addressed completely within SB144 with stronger and more precise language. SB144 assured that the starting point for all custody determinations was equal legal and physical custody unless clear and convincing evidence of parental unfitness existed. Presumptive approaches have long been problematic with Ohio law in regards to the determinations of custody. While we agree that temporary orders are a problem as this often creates a *status quo* situation that the Courts are reluctant to break, the lack of an evidentiary standard that is protective of the rights of the parents involved is bigger and is the base for the removal of fit parents based on preponderance rather that fact.

As pointed out previously, Ohio public policy (ORC 3109.401 A 1,2) on the custody of children contains language that indicates the original desire and intent of the Legislature was to have both parents engaged with their children to the fullest extent.

(A) The general assembly finds the following:
(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;

That language alone is the presumption of "shared parenting" that they claim and desire. They were unable to support their position as to why we should take a step backward rather than forward when correcting the decades old problem with language that is redundant and inconsistent with established policies of the State of Ohio.

Parenting Time Enforcement

One of the most corrosive patterns of behavior exhibited in separated parenting is interference with a parent's court-ordered parenting time. Such interference hurts the children and causes frustration and anger in the other parent. It undermines compliance with child support orders as obligors who can't see their children seek to punish the offending parent. Currently the only legal redress for interference with parenting time is a motion for contempt. This is an inadequate remedy because it is expensive and time-consuming and unlikely to be effective unless the pattern of violation is extreme and very persistent.
Several committees impaneled by the Ohio Supreme Court have recommended strong measures for dealing with parenting time enforcement. (We have included some excerpts addressing this issue from the report of the Ohio Task Force on Family Law and Children, 2011, and the Supreme Court Advisory Committee on Children, Families, and the Courts, 2005.) The idea is to provide "right-sized," "user-friendly" tools that will head off serious violations before they occur. Despite repeated recommendations from official state committees, nothing has been done legislatively, or in Supreme Court Rules, to address this problem.
We favor an approach pioneered by Missouri. This approach provides for aggrieved parents to file a simple "Family Access Motion" when parenting time has been unjustifiably interfered with. Courts are required to address the issue quickly and with appropriately sized sanctions for violators. Missouri's experience with these motions has been very positive.

The inclusion of language of this type was attempted during the introduction of HB232 122nd GA. It became a major sticking point with the judges in their oppositions to that legislation. The judges had strong objections to the requirements that "contempt proceedings" be given priority with in the courts. I have to concur with the judges on this point as I did when it was proposed during the writing of HB232.

In moving contempt proceedings to the front of an already crowded docket the risk is that the important matters of the court will be lost in the shuffle of cases. Frankly it did not fly then and it will not fly now.

Disabled Parents Protection Bill

A parent's disability should not affect his or her custodial status unless that disability would impair the ability to care for the child. California, among other states, has recently recognized this and acted to protect the parental rights of disabled parents. We advocate a change in Ohio law patterned on this recent California legislation, which provides as follows:

> *3049. In any proceeding to determine child custody or visitation under this part, in which at least one parent is disabled as defined by the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), there is a rebuttable presumption affecting the burden of proof that the disability of that parent may not form the basis for an order granting custody or visitation to another party, or for an order for imposing any condition or limitation on an award of custody to or visitation by the disabled parent, unless that other party establishes by clear and convincing evidence that a grant of custody or visitation to, or a condition or limitation on custody or visitation by, the disabled parent would be detrimental to the health, safety, and welfare of the child. This section applies to any proceeding regarding custody or visitation, including, but not limited to, a request for a modification of an existing order for custody or visitation.*

The **Americans with Disabilities Act,** established long ago by the Federal government is more than sufficient to protect the rights of disabled parents within the State of Ohio. This becomes redundant law that is trumped by a Federal Statutes which Ohio is fully in compliance with throughout the courts.

I find it very curious that they support a clear and convincing standard of review only for parents with disabilities and not the same standard of review for fit and able bodied parents. This curious flaw in their thinking would cause a rush to be declared disabled so as to take advantage of an evidentiary standard that should be available to every parent in Ohio's Family Courts.

Presumptive Child Support in Shared Parenting Cases

Based on current Ohio statutory and case law, courts are required to designate one parent a presumptive obligor and one parent a presumptive recipient of child support in shared parenting cases. But neither statutory nor case law indicates how a court is to make this designation. This vagueness in the law leads to inconsistency between courts. And, in cases where the parents have roughly equal parenting time and responsibilities, it violates requirements of equal protection of the law and is manifestly unfair.

There are broad changes necessary in Ohio's child support law. But with respect to this problem we seek a rather limited remedy for a clear omission in Ohio law. We propose amending ORC 3119.07 to require a court to treat the child support obligation of both parents in a shared parenting situation where both parents are custodial and residential parents equally unless the court finds that such treatment would be unjust, inappropriate, and not in the best interest of the child.

This has long been a problem with child support determinations in custody matters. Again I have to stress that this "presumption" was fully addressed with SB144 by creating a parenting time adjustment which leveled the playing field for households. The inclusion of a parenting time adjustment within SB144 was based on recommendation made during the Child Support Guidance Review of 2009. This was yet another proposal that they put forth that was already comprehensively addressed in SB144 and another that they could not support as to why it should be considered over already introduced legislation.

Child Support Self-Support Reserve Correction

Federal law requires that state child support laws provide for a "self-support reserve." What this is intended to do is to protect a child support obligor from being pushed below the poverty line by child support obligations. The federal law is motivated by the awareness that pushing parents who pay child support obligation into abject poverty will not result in increased resources for the children and will have the effect of driving the obligor into an underground economy and, usually, out of the child's life.

When the Ohio child support law was drafted, it incorporated a very serious error: it defined the self-support reserve in terms of the combined income of the two parents. This causes a problem when the obligor's income is near the poverty level but the recipient's income is well above that level. In such cases, the Ohio self-support reserve will not protect this obligor from being driven below the poverty level.

This problem has been recognized by all of the recent Ohio Child Support Guidelines Councils. We know of no organization that supports this aspect of the current law. The only reason the problem has not been corrected is that legislation to correct it has always been incorporated in broad, sweeping child support reform legislation—legislation that it has proven impossible to pass.
It is wrong to hold the correction of this universally recognized problem hostage to broader child support agendas. We seek to have a bill introduced that would correct the current mistake in Ohio's definition of the self-support reserve.

This is a much talked about and nothing done about issue with child support and the tables. This is an idea that has been around for at least ten years and it has gone nowhere during that time. It was one of the good thing suggestions in the 2009 Child Support Guidance Review reports but it was never addressed in SB292 GA 128th.

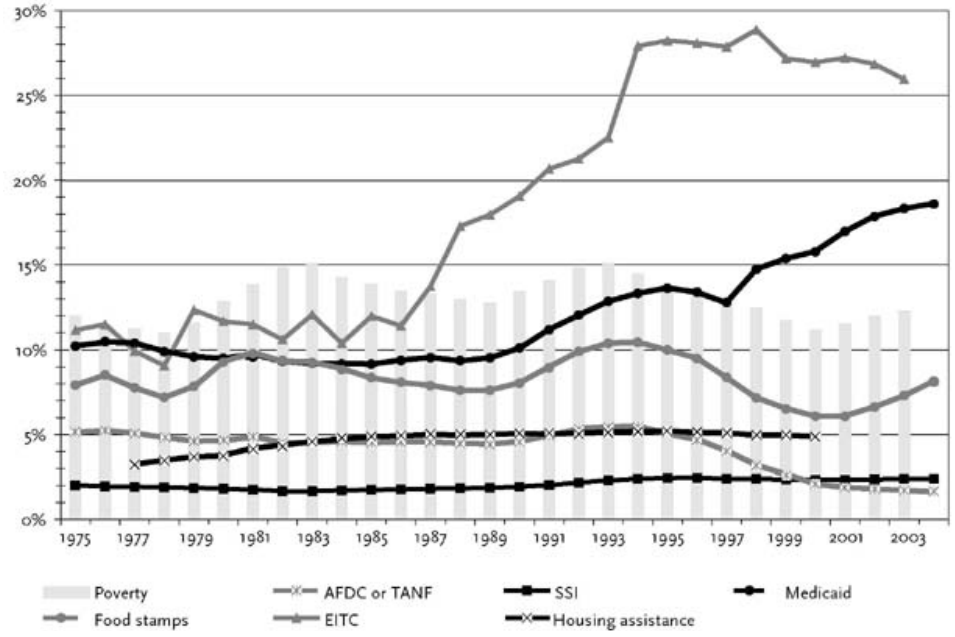
I do believe that we need to try it but it has to be done as a separate piece of legislation or included within an overall reform of Ohio's Child Support laws. I did address this in the report I submitted on the problems we have with our current child support laws but I strongly believe that until we have tables that properly reflect the costs of raising a child and the cost of living in Ohio, not the "region", that we will never be able to properly accomplish and set a correct child support reserve.

From the report:

One of the most often talked about and nothing done about issues with current child support. We must instill a reserve base that assures that we never so bury a person in responsibilities that causes them to be an additional burden on the State or place them in a state of permanent poverty. The purpose of Child Support is to balance the economic factors within the households in such a manner as to assure that the child has a balanced lifestyle within the homes of both parents. To explain the effect on Ohio families, impoverishing one parent while enhancing the economic lifestyle of the other parent harms that child and does more financial harm to the State of Ohio than good. Since child support cash pass through amounts are tax free transfers of the actual availability of cash received is higher than that of someone that earned the same amount of money.

One case that comes to mind as an example is that of a young man in Cincinnati. His support is paid on time every month and without complaint as he works a full time schedule plus. His soon to be ex-wife is drawing over $48,000 of tax free income while she sits and does not work. Only one of the children that she has borne is of an age where they are not in school. As any working person would say, "Nice gig, where do I signup?" That is the equivalent of the disposable income from a $70,000 actual job.

One must question why the Courts and State of Ohio have not taken to issuing a "Seek Work" style orders to assure that both the mother and the father are actively participating to the financial burdens associated with the raising of a child. This overall attitude that often prevails with the Courts that a custodial parent should be allowed to sit at home without working reeks of a throwback to the ***Tender Years Doctrine*** *which had us believing that only a Mother could raise a child. Times have changed greatly since those days as the number of women entering the workforce has increased to levels that now nearly match those of their male counter parts.*
In 1975, only two out of every five mothers with a child under age 6 held a paid job, currently, 70.5 percent of women with children are in the labor force. Yet the growth of government assistance has



increased tremendously. One must wonder why this mindset of placing the financial burden on one party makes sense any more while we reward the stay at home just because we can. We make daycare vouchers available yet don't take the opportunity to spread the cost of raising the child between the parents by making them join the workforce, yet provide monetary assistance with housing, medical and food so that we help the poor. The chart above shows the massive increases that have taken place since 1975 and with the coming problems of the Affordable Health Care Act this will only get worse for the State. Even with the State of Ohio opting to allow the Federal Government to run the exchange within Ohio.

The issuing of seek work orders will become increasingly important in the cases of the unmarried parents. It may just be my perception but this is the area where we likely have the highest TANF recovering costs and expenditures. While the federal rules on Welfare may no longer require parties to attempt to seek work to continue their benefits, I see no reason why we cannot enforce this as our own method of controlling costs that are likely to spiral in the coming years. Common sense would tell us that if we are to control costs and create a true child support reserve that we assure that no parents' available income drops below the level at which one becomes eligible for benefits. The problem has perplexed this state and others for years and remains unsolved. I am saying apply a common sense and established point that is well accepted as the norm. That may not be a popular answer to this problem but it is a reality that we have for too long allowed some parents to skate of their responsibilities while choosing to impoverish those so that they do and continue to work only to have their reward transferred to another.

Frankly the issue of a child support reserve is one that will continue to come up and one that I have yet to see a state address in a manner that works. Addressing this now as an amendment or as a separate bill will be problematic as we have yet to receive the report from the latest Task Force on Child Support. Until then this will remain one of the proverbial elephants in the room.

Ohio Family Rights formerly National Organization for Parental Equality

While this organization became to some a new name, its' base was from the Parents And Children for Equality (PACE) organization. The assets of PACE were granted to us when PACE decided to end their existence. As a Board Member of that group I continued the traditions of working with legislators to bring about necessary changes to Ohio law that work for parents, children and the State of Ohio. All must be considered when bringing new laws to the state.

I have a full understanding of the delicate balance needed to create a good working law for Ohio having previously been involved in the writing of HB232 122nd and the subsequent reintroduction of the same bill the following session as HB688 126th. The language and reforms contained in SB144 and HB253 129th were the result of years of careful work and study of the problems within Ohio's approach to custody between parents that have ended their personal relationship with another adult not their relationship with their child.

We were fortunate to have the blessings and sponsorship of Senator Michael Skindell and Senator Tim Grendell in the Senate and Representatives Ron Young, Carlton Weddington, Kenny Yuko, David Burke and Alicia Reese in our attempts to solve one of the most complicated issues that we face as a state. What we did was create the most comprehensive reforms ever introduced and at the same time put forth legislation that will set the model for the rest of this Nation to follow.

As I we worked on the changes that became SB144, we gathered information for parents across the State of Ohio and looked at just how the Courts were handling the issue of awarding custody of children.

We arrived at the conclusion that some very necessary changes needed to be made to create legislation that worked for all.

1. We must have a change in the evidentiary standard. This is the degree at which a judge considers the facts before him. A change from preponderance to "clear and convincing" is necessary to limit the errors in determining custody or parental fitness should the Courts become involved.
2. We needed to have a set baseline and definitions of that baseline. "Shared parenting" is a confusing term and has no true definition under the law. As we reviewed the Ohio Supreme Court Report, *Planning for Parenting Time – Ohio's Guide for Parents Living Apart*[7] it became very apparent that there was intent to socially engineer fit parents into limited time with their children for no reason other than ending an adult relationship.
3. We needed a change in the approach to temporary others to assure that parents started the divorce process of even ground.
4. We needed to assure that the procedures contained, created a situation that created consistency in all determinations. This was further cemented by a conversation with a Family Court employee that said she had seen similar parents treated differently within minutes of their two different hearings.
5. We needed a method that allowed a parent to correct their identified defects so that they could return to a full engagement with their children. The method was contained within the procedures in place within abuse and neglect cases in Ohio. Often the same judge is hearing abuse and neglect cases and divorce proceedings.
6. We needed a true parenting time adjustment that was automatic, not discretionary. While SB292 128th GA addressed the parenting time adjustment, it did not reflect a complete adjustment that reflected the amount of time that parents were spending with their children. Through a flaw in that language of that bill, it remained discretionary.

[7] Planning for Parenting Time – Ohio's Guide for Parents Living Apart
http://www.supremecourt.ohio.gov/Publications/JCS/parentingGuide.pdf

7. We needed to protect the discretion of the judges but at the same time give them the guidance that they have needed.
8. We needed to minimize the ability of the courts to "crystal ball" determinations based on their feelings instead of hard fact. No one can accurately predict the future, why are we allowing judges to do this with the families of Ohio?
9. We need to limit the use of false allegations that so often clog the courts with the desire to simply give one parent over the other an advantage from the start. The evidentiary standard change does that.
10. We needed to protect the State of Ohio's interests in protecting the most vulnerable of its citizen, the children, so that they have the best chance at a happy and productive future.

The language of SB144 129th GA does accomplish all of these goals. This is the comprehensive solution that works for all concerned and must be reintroduced over all other proposals and passed to protect the future of Ohio.

What the legislation does:

1. It will increase the involvement of both parents in children's lives – *society has long complained about the lack of father involvement but it is not the fathers at fault here; it is the law that has allowed this to happen.*
2. It will place the decisions on how to raise the family in the hands of the family by setting a default baseline for custody– *this will encourage the mother and the father to actively come to a resolution as to how the children will be handled after the dissolution of the marriage.*
3. It will decrease the litigation involved in divorce – *In conversations across the state with top divorce attorneys, they all lamented about the excessive and unnecessary paperwork and motions in divorce just to protect a client. Every one of them was applauding this bill and is begging **for** this legislation, including former Domestic Relations Judges and current Juvenile Court judges.*
4. It will decrease the impact and use of children as pawns between two divorcing parents- *The change to clear and convincing evidence, which is the highest standard of review, will reduce the use of false allegations that have become rampant in the courts.*
5. It will reduce the societal costs from providing counseling for children – *we don't screw them up in the first place; we won't place the burden of rehabilitation on society later.*
6. It will benefit businesses by reducing their operating costs and lost time expenses. If the State is to be business friendly, it must be family friendly first..
7. It will reduce the cost of operating the Domestic/Juvenile/Family courts by lessening the burdens on the courts' heavy caseload – *Cuyahoga County Domestic Relations Court was the subject of a Supreme Court report in which they were admonished for slowness in dealing with cases. Numerous times the*

domestic court judges have complained about their case loads. Within 3 years we predict that we will see a reduction in case load of as much as 50%.

8. It will reduce the divorce rate in the State of Ohio- *Studies have shown that the states with the strongest presumption of shared parenting laws have seen reduced rates of divorce. This legislation will take us on step farther and we expect to see those rates drop significantly in the future. Some estimates have gone as high as a 35% reduction in divorce rates within 5 years or less.*
9. It will improve the education of our children *Mothers and Fathers have different approaches and skill sets when helping a child with their education and we should keep them more closely involved in the education of their children.*
10. It does **not** require that every case have equal custody, this is a starting point and the final decision is placed in the hands of the parents of those children – *This is one the things that opponents will say about. This is a created misperception about the legislation. Realistically this will encourage the parents to meditate to a settlement in regards to custody matters.*
11. It does **not** remove judicial discretion but gives the court better definition of how to handle custody decisions- *This is in opposition that the judges have always stated when faced with reforms of this nature. This is a major step outside the bounds of comment for them as Ohio law only permits them to comment on matters that affect the administration of the courts, not applications of law. The Judicial Association comments on this raise serious question for me on their crossing the line defined by separation of powers principles.*
12. It does handle a conflict in law between the manner in which the Juvenile courts and the Domestic Relations Courts handle parents. Juvenile courts place unsuitable parents on a case plan so they can be reunified with their children. *Domestic Relations Courts limit the time of the "offending" parent forever and offer no method with which to rehabilitate that parent to make them a stronger influence in their children's lives. That corrective plan is used commonly with cases of abuse and neglect.*
13. It does **not** affect the domestic violence laws of this state. *Domestic violence advocates have made claims that such law will cause more of these crimes. We will likely see a reduction in such claims, many of which are false attempts to gain and advantage currently with the courts.*
14. It does **not** eliminate child support; it reforms the application of deviations by the courts in a more parent friendly manner with a true parenting time adjustment.

Key Points of the Legislation explained in detail

- Equal legal and physical access – throughout this bill. – *This corrects what many have called a major conflict with the 14th Amendment's equal protections clause. With custody being awarded 85% of the time to women this will give men an equal chance to be involved with their children. We know the statics that*

support father involvement and their influence on a child. Life and the benefits to society.

- Clear and convincing becomes the standard of review - *This corrects the use of discretionary decisions and requires the courts to use facts not affidavits as their basis for awarding custody. This will also eliminate the use of fasle allegations which are a major problem for the courts and commonly used to "take" a parent out of a child's life.*
- Automatic deviations on child support – *A parenting time adjust has long been sought and this will correct the situation for parents that have their children 50% of the time and are currently paying child support as if they are seeing them only a minimum. This does not eliminate child support. What this will do is make the support amounts fair for both parents and responsible for the costs of raising a child. This is based on recommendations of the last Child Support Review.*
- Guardian Ad Litem become a <u>may</u> instead of a <u>shall</u> and costs are taxed equally – *At present the costs of the Guardian Ad Litem are not divided equally burdening one parent with the costs of involvement that effects both parties.*
- Psychological, medical and psychiatric exams are by written motion with costs taxed to moving parties or divided equally – *The costs involved with these exams are very high and often unnecessary and brought on by false claims that are presently very prevalent in the courts. Often these are verbally motioned for or suggested by an attorney as a method of dragging the process out longer.*
- Courts must support, with finding of facts and conclusion of law, any order when they reject a plan or find a parent less than capable of parenting in an equal manner. – *This one will have a far reaching effect as this will make life easier on the Appellant level courts in the state. With the current discretionary standard that is used in the family law system in Ohio, the decisions of the courts can be based on the personal biases of the judge's opinions rather than supported facts and law. This causes a problem for the Appeals Courts when often the only method of challenging a decision is to make the calm that a trial court abused their discretion (Blakemore V Blakemore is controlling Ohio Case – just so happens the winning attorney in this case was my divorce attorney) The court will now have to fully support their decisions.*
- If a court awards less than equal they have to set up a plan of action so that the unsuitable parent can remove the unsuitability. –*This is done in juvenile court all the time and will bring this to the Domestic Relations Courts for the first time. The methodology is plain and simple if the court finds that a parent has a defect that means that they are unable to be an equal part of their child's life, that parent will have the chance to correct that defect so that they can once again become the fit parent that we as a society want them to be. This would be the procedure when it is provable that a parent has a drug or alcohol problem.*
- The use of child support as method of blocking equal access is addressed by now considering whether a parent had the ability to pay. –*Often we have parents that fall behind on child support payments of work or unreasonable orders. The*

unions pushed for child support and custody to be separate issues because of layoffs and plant shut downs which were often mandatory. These often created a situation of being unable to pay, same as with the unreasonable orders, which then causes a person to be in arrears. With these two issues supposed to separate, why are we still allowing it as part of the custody determination process? This one is common sense.

- The use of "potential harm" is removed. - *No more crystal balling by the courts and trying to predict the future. If a judge was truly able to do this then why are they not hitting the state lottery all the time?*
- Old orders can be revisited and changed once this is signed into law – *Going back and doing this will be up to the individual parents involved but this will make the option available should a parent know that the original decision was wrong and that they were fit and should have had equal custody from the beginning.*
- Temporary allocations are equal unless clear and convincing evidence suggest otherwise. - *The status quo long used by temporary orders to prevent changes is gone with this as there will have to be a full evidentiary hearing instead of the courts making their determinations on "temporary orders" based on affidavits. They will be required to use proper evidentiary standards of review.*

The Myths of "Equal Custody" Legislation

When discussing this with legislators I am often presented with the following arguments against legislation such as this. I want to briefly touch on the biggest misnomers about this type of legislation.

- ***Every man that wants equal custody of his children only wants it to avoid paying child support.*** Fasle. Times have changed and the amount of "engagement" by males and females has also change over the years. Mothers are much more involved in the workforce and fathers are much more involved in the day to day care of their children. Reality is that more direct support, in terms of dollars, is spent by fathers when they are equally involved in the lives of their children than with the current system of passing that money thru the child support system.
- ***This will force all parents into an equal arrangement of custody.*** **False.** What the language of this legislation does in puts the handling of the family in the hands of the family. Families having different situations are given the ability to address the needs of their family directly rather than rely on a third party that has little intimate knowledge of the needs of the family or children involved. Common sense tells us that they did before the breakup of the marital or personal relationship, should they not continue after that.
- ***This will cause more domestic violence.*** **False**. Domestic violence is a criminal act that is based on doing physical harm to another family member. Claims made within the Family Court system are civil, not criminal in nature. We see strong

indications that this will reduce the use of fasle civil claims that are often used for advantage only.

- ***This will destroy the discretion of the judges.*** **False.** Their discretion remains in place but is given clear guidance in the use of that discretion that has been missing for years.
- ***This will cause the cost of divorce to increase by increasing the amount of litigation.*** **False.** This will place decision making back in the hands of the family and will encourage the use of mediation rather than expensive litigation.
- ***Collaborative law fixes this problem.*** **False.** Collaborative law is a voluntary involvement concept. It does not address the root of the problem which is the lack of a baseline or default position of custody of the children. Same baseline and the same result. Collaborative law increases the cost of a divorce by forcing the use of attorneys to negotiate a settlement in divorce. The current system allows for mediation of terms through the use of any third party which may or may not be paid. The reality is that mediation programs have been in place in all the family courts in the State of Ohio.
- ***This will increase the costs of operating the Courts.*** **False**. This will decrease the number of hearings that are needed to come to a conclusion of the dissolution of a personal relationship. The courts will only find themselves placed in litigation when the fitness of a parent is questioned and able to be substantiated.

We have studied and talked about necessary reforms for the past 10 years. The talk has and continues to sound like a broken record as we hear more cries about the problems of society that are related to the "fatherless home". If we are to have a chance at correcting a bad law that has become a money pit for the State of Ohio, we must move on these reforms now.

Throughout this report I have laid out the case as to why we need these reforms and what the extreme price is that we as a state are paying. I have covered many aspects that have never been considered by the pundants that have spoken and written volumes about the "problem". I have approached this in a common sense method that makes sense for parents, children and most importantly for the State of Ohio.

During his first State of the State address, Governor Kasich told us all that if there was a problem, to come forward and we would work on a solution. The solution to this problem was introduced during the 129th General Assembly but was stalled by outside interests that have little knowledge of the problems of Ohio or concern for this State. It is time that we as citizens and legislators make the bold move to completely reform a broken system of law that has failed everyone for the past twenty years.

The question remains, "Why do we remove fit parents from the lives of the children every day?" Common sense tells us that we should not allow it to happen; yet current law makes it happen every day.

It is time to correct this for our future generations of Ohioans so that we can excel as the Great State that we are capable of being.

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