



PACE

Parents And Children for Equality

Bulletin



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The "Best Parent" is Both Parents

February, 2001

"Parents Don't Visit" and Other Changes in Ohio Law: Highlights of the Impact of Senate Bill 180

Senate Bill 180 of the 123 Ohio General Assembly was passed unanimously last December and signed into law by Governor Taft on December 21, 2000. The sweeping changes to Ohio paternity and child support law instituted by this law go into effect on March 21, 2001.

The bill itself is more than 600 pages; the analysis provided by the Legislative Services Commission is 120 pages. It is impossible to quickly summarize the changes to Ohio law that result from this bill. However, to help navigate through some of the new legal territory, Parents And Children for Equality provides the accompanying document: *Highlights of the Legal Impact of Senate Bill 180*. We hope you will find it helpful.

Here are some highlights of the highlights. For statutory citations, see the accompanying sheet.

- ◆ **Replacement of 'visitation' with 'parenting time'.** The term 'visitation' is no longer used in the Ohio Revised Code to refer to time parents spend with their children. This time is now called 'parenting time'. While this is a terminological change only, PACE welcomes it in the hopes that it signals a growing awareness that both parents are full parents to their children regardless of marital status. Like the term 'absent parent' still employed by the Ohio Department of Jobs and Family Services and CSEAs throughout the state, the term 'visitation' is gratuitously offensive to Ohio's non-residential parents.
- ◆ **Redefinition of "gross income".** Finally, spousal support will be handled in a sensible way when determining each party's gross income for computing presumptive child support. Pursuant to the new definition provided for in §3119.01, 'gross income'

includes "spousal support actually received from *any* person" (emphasis added). PACE believes that this has always been the intention of the Ohio Legislature, since excluding spousal support that is paid by the other party to the child support action makes no sense. However, Ohio courts, following the flawed logic of the *Bailey* decision (*Bailey v. Bailey*, September 22, 1992, Franklin App. No. 92AP-446, unreported, 1992 Ohio App. LEXIS 4900), have persisted in the fiction that spousal support actually paid by one parent to the other is part of the gross income of the payer and not of the recipient. Finally, the Ohio Legislature has corrected this error.

- ◆ **Collection of obligee's state income tax refund to repay overpayments.** Under certain (fairly liberal) conditions, a *recipient's* income tax refund may be intercepted to repay an obligor for a child support overpayment.
- ◆ **Calculation of presumptive child support amounts in "high" and "low" income cases.** Presumptive child support amounts in cases where the combined income of the parents is greater than \$150,000 or less than \$6,600 may not be done by simple extrapolation of the tables. Subject to certain constraints, presumptive child support in these situations must be decided on a case-by-case basis.
- ◆ **Calculation of retroactive child support.** Calculation of retroactive child support must be done in accordance with the child support tables, worksheets, child support laws and incomes of the parents as they existed at the time being covered.

While SB180 makes sweeping changes to Ohio paternity and child support law, there is much work still to be done. First, as

with any bill of this length and complexity, some unintended changes crept into the final version of the bill. For example, an unfortunate typographical error occurs in the instructions for line 23 of the worksheet. Lawmakers have assured PACE that such mistakes will be corrected at the earliest possible opportunity.

More substantively, while SB 180 enacts into law almost all of the recommendations of the second Ohio Child Support Guidelines Advisory Commission, controversy over the parenting time adjustment—overwhelmingly recommended by that Commission—resulted in that provision being dropped from the bill. Ohio's continued refusal to presume a fair distribution of total child support funds between the two parents based on reasonable assumed expenses on the children, perpetuates a grave injustice to Ohio's children. We look to the legislature to correct this injustice during the 124 General Assembly.

PACE thanks Senators Kearns, Schafrath, Drake, Mumper, Gardner and Representatives O'Brien, Willamowski and Winkler for the dedication to Ohio's children they have exhibited in moving SB180 through the Ohio legislature. We also thank Governor Taft for promptly signing this bill into law. There is much work still to be done to improve Ohio laws for families and children, but Senate Bill 180 was an significant step in the right direction.

For more information on the legal impact of Senate Bill 180, see the analysis of the Legislative Services Commission at:

<http://www.lsc.state.oh.us/analyses/00-sb180.pdf>

or, view the full act at:

<http://ohioacts.avv.com/123/sb180/home.htm>

For previous *PACE Bulletins*, visit our web site at www.pacegroup.org.

—Don Hubin, *Bulletin* editor

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A non-profit, tax-exempt educational organization supporting parents and children of divorce and separation

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Highlights of the Legal Impact of Senate Bill 180

On December 7, 2000, Senate Bill 180 was passed unanimously by the Ohio House and Senate. It was signed by Governor Taft on December 21 and goes into effect 90 days after signing, on March 21, 2001.

This bill, sponsored by Senators Kearns, Schafrath, Drake, Mumper, Gardner and Representatives O'Brien, Willamowski and Winkler, makes many changes to Ohio's laws concerning child support and parentage. In addition to very significant substantive changes, it undertakes a major reorganization of the Ohio Revised Code concerning child support and parentage and finally eliminates use of the terms 'visitation' and 'companionship time' to describe a parent's time with his or her children.

The Ohio legal landscape concerning child support and paternity issues has shifted. To help navigate in this new environment, *Parents And Children for Equality* (PACE) offers the following selected highlights of the legal effects of Senate Bill 180.

Please note that we are highlighting only *some* of the changes brought about by this complex bill. In particular, the following indicates only support-related changes—ignoring the significant changes in parentage law. (For further information on the effects of SB180, we direct you to the analysis of the Legislative Services Commission available on the World Wide Web at: <http://www.lsc.state.oh.us/analyses/00-sb180.pdf>. The full text of the new law created by SB180 is available at: <http://ohioacts.avv.com/123/sb180/home.htm>.)

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SUPPORT CHANGES:

CHANGES TO CHILD SUPPORT CALCULATION,

ARREARAGE COLLECTION, AND CHILD SUPPORT MODIFICATIONS

- **Definition of 'Gross Income' (§3119.01):** SB180 changes the definition of 'gross income' for purposes of calculating presumptive child support obligations. The new definition includes:
 - ◆ Social Security benefits, including retirement, disability, and survivor benefits that are not means tested;
 - ◆ Veterans' benefits that are not means tested and that are in the possession of the veteran who is the beneficiary; and,
 - ◆ Spousal support actually received from any person.

This last change means that spousal support paid from one party to a child support action to the other will finally be handled in a rational manner. As a result of the flawed Bailey decision (*Bailey v. Bailey*, September 22, 1992, Franklin App. No. 92AP-446, unreported, 1992 Ohio App. LEXIS 4900), Ohio courts were failing to add spousal support received from the other parent to the income of the recipient and were counting it in the income of the payer. The Ohio Legislature has corrected the Tenth Appellate Court's mistake. Now, the spousal support that is actually received from any person will be counted in the recipient's income and deducted from the income of the payer. The Bailey decision is no longer law!

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- **High and Low Income Cases (§3119.04):** When the combined income of the two parents is less than \$6,600 or more than \$150,000, courts must make a case-by-case determination of appropriate child support amounts subject to certain constraints. Simple extrapolation of the tables for high income cases is not permitted, but there is a presumption that couples earning more than \$150,000 per year will not have a combined child support obligation less than that for couples earning \$150,000. (Note: The analysis from the Legislative Services Commission is confused here. Be sure to read the language in the act.)
- **Calculation of Retroactive Support (§3119.05):** Calculation for retroactive support must employ the child support tables, worksheets, child support laws and the incomes of the parents as they existed at the time being covered.
- **Employment Status of Recipient of Means-Tested Public Assistance (§3119.05):** A court or CSEA may not determine that a recipient of means-tested public assistance benefits is voluntarily underemployed or unemployed or impute income to that person unless not doing this would be unjust, inappropriate, and not in the best interest of the child.
- **Specification of “Any Other” Deviation (§3119.23):** When a court deviates from guideline child support amounts based on the statutorily recognized “any other relevant factor” clause, it must specifically state in the order the facts that are the basis of the deviation.
- **New Worksheets (§3119.022 & §3119.023):** Child support worksheets have been changed. See the relevant sections of the Revised Code for the new worksheets. (Note: There is what is almost certainly a typographical error on the worksheet for sole custody and shared parenting [§3119.022] in the instructions for line 23. Presumably, to be grammatical and constitutional the instructions were intended to read, “LINE 22a OR LINE 22B, WHICHEVER LINE CORRESPONDS TO THE PARENT WHO IS THE OBLIGOR”.)
- **Collection of Support from Obligor Paying Off Arrearages (§3123/22):** A CSEA may employ a variety of measures to collect arrearage amounts (intercept income tax refunds, issue a withdrawal directive to a financial institution, *etc.*) notwithstanding the fact that the obligor is paying off the arrearage pursuant to a withholding or deduction notice, cash bond order, or seek work order; pursuant to a support order newly issued or modified; or pursuant to any other order issued to collect the arrearage.
- **Claiming Children as Dependents for Federal Income Tax Purposes (§3119.82):** Whenever a court issues, modifies, reviews, or otherwise reconsiders a court child support order, it must designate which parent may claim the children who are the subject of the order as dependents for federal income tax purposes.
- **Elimination of Option to Pay Child Support as Lump Sum (§3111.13, §3111.16 & §3111.81):** Courts are not permitted to order payment of child support in a lump sum. The option of purchasing an annuity to pay child support is retained.
- **Collection of Obligor’s State Income Tax Refund to Repay Overpaid Child Support (§3123.82, §3123.821, §3123.822, §3123.823 & §5147.123):** Under certain conditions a RECIPIENT’S state income tax refund check may be intercepted to repay obligors for overpayments. One condition is that the overpayment must be at least \$150.
- **Computation of Child Support for Remaining Children Upon Termination of Support for One Child (§3119.89 & §3119.90):** SB180 clarifies how an agency must compute child support for minor children still covered by a child support order when child support for another child covered by the order has been terminated. The CSEA must divide the child support due annually and per month under the order by the number of children who are the subject of the order and subtract the amount due for the child for whom the order should be terminated from the total child support amount due annually and per month. The resulting annual and per month child support amount must be included in the results of the CSEA’s investigation as the recommended child support amount due annually and monthly under a revised child support order.

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