

From: **mike smalz**

Date: Thu, Mar 24, 2016 at 12:03 PM

Subject: RE: Non-Parental Rights to Child Custody and Visitation: materials for Apr. 1-2, 2016 committee meeting

I have reviewed the current draft of the Non-Parental Child Custody and Visitation Act. I have just a few comments.

1. In response to the Reporter's Note at the top of page 6, I answer Yes to the question of whether domestic partners should be included in the Definitions statute – Section 2. Although there will no doubt be far fewer people filing domestic partnerships or civil unions because of the U S Supreme Court's gay marriage decision, there are still a significant number of people who fall within this category and should qualify as "de facto parents."
2. Regarding the two alternative definitions of "parental responsibility" on page 6, I recommend Alternative B because it provides more specificity, but I also agree that the term "mental" can be deleted from that alternative definition because it is superfluous.
3. I prefer Alternative B for inclusion in the Pleadings statute – Section 3 – on page 14 because it provides for more specificity and requires an allegation of "detriment to the child if the custody or visitation requested by the petitioner is not granted." This requirement may discourage the filing of frivolous custody actions by non-parents. However, the phrase "the nature the relationship" on line 11 should be changed to "the nature **of** the relationship." This omission is apparently a typo.
4. I strongly support the "clear and convincing evidence" standard set forth in Section 5 on page 17 (Line 30) because it should not be too easy for non-parents to take custody of children away from their children's parents and the higher required burden of proof in these cases is warranted.
5. For Section 8 on page 27, I agree with the suggestion that the list of persons against whom domestic violence has been perpetrated be expanded to include "domestic partners." However, I do not like the suggestion that the more detailed list of persons in the existing language be changed to "family members" because that phrase is too vague.
6. On page 29, there are several proposed additional factors to the child custody or visitation factors already included in proposed Section 7. I agree with the proposed additional factors of "specific parent - like activities undertaken by the non—parent," the "nature and extent of parental involvement by the non-parent," and "any significant absence of the parent from the child's life." I don't see any reason to add the "death of a parent" to the enumerated factors in Section 7. Courts should consider all relevant factors in making custody and visitation determinations under this statute, and the proposed additional factors could in many cases be relevant to that determination.
7. Section 17 on page 36 should be deleted. It should be up to the individual states to determine what types of cases should be given priority on their court calendars. I also agree with the comment in the Reporter's Note that these procedural priority requirements have relatively little effect anyway.

As a general observation, this draft uniform act looks pretty good. It would, if enacted, improve the law in Ohio and (I suspect) in many other states.

Michael R. Smalz

Senior Attorney
Ohio Poverty Law Center
555 Buttles Avenue
Columbus, Ohio 43215
Phone: 614-824-2502
Fax: 614-221-7625
Email: msmalz@ohiopovertylaw.org

Using the Law to Fight Poverty in Ohio