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## Unstable Homes Exacerbated by Unstable Courts: How Ohio's Split-Child-Custody Jurisdiction Harms Ohio's Children and Families

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## UNSTABLE HOMES EXACERBATED BY UNSTABLE COURTS: HOW OHIO'S SPLIT-CHILD- CUSTODY JURISDICTION HARMS OHIO'S CHILDREN AND FAMILIES

PHILIP SHIPMAN \* #

### ABSTRACT

Raising a child is very difficult. Add to the difficulty in raising a child the specter of a child custody suit, and you have a recipe that can end in disaster.

In Ohio, child custody is not fair. It is not just. It is determined by judges, whose jurisdiction is determined by whether the child's parents were married to each other. Under this jurisdictional scheme, Ohio's children are failed. This failure stems from Ohio courts making their own rules without care to fairness and equality. Within most of Ohio's eighty-eight counties, juvenile and domestic relations courts can, and do, set separate, often disparate child visitation schedules. This means that a child can live next door to another, and yet the minimum allotment of visitation time with a parent

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\* J.D. Expected May 2024, Cleveland State University College of Law. I would like to thank my loving wife Stephanie, and my beautiful daughters, Aurora and Merida, for all their love and support during law school and the writing of this Note. You are my everything.

I would also like to extend a special thank you to my family and friends who have supported me always.

Thank you to Cleveland State University College of Law Professors Brian Ray, Karin Mika, and Matthew Ahn for their guidance, support, and insight in the construction of this Note. I would like to thank Cuyahoga County Domestic Relations Court Judge Diane Palos for taking the time to discuss the direction of my Note. Nothing in this Note should be taken to represent the opinion of Judge Palos. Finally, thank you to Hunter Hurst for providing innumerable resources and guidance as I determined how to proceed in the Note writing process.

# A separate, very special, thank you goes out to Ohio Eighth District Court of Appeals Judge Kathleen Ann Keough. Prior to law school, I was fortunate enough to hear Judge Keough discuss at an oral argument the issues caused by allowing both juvenile courts and domestic relations courts in Ohio to determine custody. It was from this discussion that the idea of this Note was born. Nothing in this Note should be taken to represent the opinion of Judge Keough.

under a child custody order is likely wildly different. This Note will examine the history of this jurisdictional scheme, explore the negative consequences that are failing Ohio’s children, and will propose a solution that will benefit children that are currently stuck going through the child custody system.

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## I. INTRODUCTION

Sophia<sup>1</sup> is a five-year-old girl in kindergarten. As her classmates head home from their first day of school, many of them will be warmly greeted by both of their parents.

Unfortunately, Sophia's parents are going through a divorce. When Sophia gets home, she arrives to an upset parent wondering how this will all shake out.

Across the street, five-year-old Jackson<sup>2</sup> came home to his single parent who was just served with a child custody suit. Just like Sophia's parent, Jackson's parent is wondering how all this will shake out. As both sets of parents embark on this journey, their destinations may vary.

When people think of a child custody battle, a contentious divorce where mom and dad are fighting over the kids likely comes to mind. But the child custody battles of modern American families involve many different types / makeups of families. In 2020, over forty percent (40%) of American children were born to unmarried mothers.<sup>3</sup> The nature of family is changing in the United States, and families may consist of same-sex parents, single parents, or various other situations that bring families together outside the "traditional" realm often depicted in pop culture.<sup>4</sup> No matter what the family composition is, parents involved in a custody proceeding must still deal with a court system that will determine every aspect of how they interact with their children, or even if they can see their children at all.

Unfortunately, custody and visitation decisions in Ohio are wildly inconsistent—in part because jurisdiction over custody matters is split between the domestic relations court and the juvenile court.<sup>5</sup> Throughout this Note, this split in jurisdiction will be referred to as a split court. In Ohio, a person who wants to start a child custody case<sup>6</sup>

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<sup>1</sup> This name was the number one baby girl name in 2017, which would be the year Sophia was born. BABYCENTER, <https://www.babycenter.com/baby-names/most-popular/top-baby-names-2017> (last visited Nov. 27, 2022).

<sup>2</sup> This name was chosen because it was the number one baby-boy name in 2017, which would be the year Jackson was born. *Id.*

<sup>3</sup> MICHELLE J.K. OSTERMAN ET. AL, CTR. FOR DISEASE CONTROL AND PREVENTION, BIRTHS: FINAL DATA FOR 2020, National Vital Statistics Reports, Vol. 70, No. 17, Feb. 7, 2022, Table 9, <https://www.cdc.gov/nchs/data/nvsr/nvsr70/nvsr70-17.pdf>.

<sup>4</sup> Shoshana K. Goldberg & Kerith J. Conran, *How Many Same-Sex Couples in the US are Raising Children?*, UCLA SCH. OF L., WILLIAMS INSTITUTE (July 2018), <https://williamsinstitute.law.ucla.edu/publications/same-sex-parents-us/> (showing that in 2016, there were approximately 114,000 same-sex couples raising children).

<sup>5</sup> John T. Nicholson, *Difference between Domestic Relations Court and Juvenile Court in Custody Cases*, LAW OFF. OF JOHN T. NICHOLSON (Aug. 2, 2009), <https://johntnicholson.com/ohiolawblog/dayton-ohio-dissolution-divorce/difference-between-domestic-relations-court-and-juvenile-court-in-custody-cases/>.

<sup>6</sup> For purposes of this Note, this author includes child custody, visitation, child support, parentage, and U.I.F.S.A as child custody and related matters. U.I.F.S.A (the Uniform Interstate Family Support Act) requires states to handle child support cases where parents are not located in the same state. *See* 42 U.S.C. § 666(f).

must answer a series of questions before the commencement of their case.<sup>7</sup> The first question is, “[w]ere/are the parents married?”<sup>8</sup> The second question is, “[i]s there a child custody order over the child?”<sup>9</sup> Depending upon the answers to those questions, jurisdiction over the custody matter is vested in either the domestic relations court or the juvenile court.<sup>10</sup> Once jurisdiction is established, the child involved has no choice but to be a part of a process that may yield vastly different results than if matters were determined by the other court (juvenile or domestic relations).<sup>11</sup> These vastly different results are because the presumption of time spent with a parent is predicated by the presence or absence of a marriage license between the child’s parents. Even further causing issues in the process is the fact that within each of Ohio’s counties, the domestic relations court and juvenile court can set separate, and often disparate, standard visitation schedules.

These vastly different and disparate results are harmful to Ohio’s children. For instance, although Ohio does have a visitation statute, the statute only encompasses factors to be considered when granting visitation.<sup>12</sup> Visitation schedules are decided in the courtroom, using judge-made rules of minimum visitation.<sup>13</sup> What this means is that there is no overarching statute that determines how much time a child may spend with each parent. Instead, the judges of each county court handling child custody are able make their own local rule. These judge-made rules only apply to the specialized court using them. So, within many Ohio counties, the children under domestic relations courts have a wildly different visitation schedule than those children under the same county’s juvenile courts.<sup>14</sup>

This Note focuses on two broad topics: first, the numerous issues faced by Ohio’s children in the child visitation scheme; and second, the fundamental unfairness of having a fractured court system for the determination of child custody.

Part I will discuss the background of how the current split courts were initially created and introduce the concept of the family court. It will detail the procedural and substantive differences that lead to significant inconsistencies for Ohio’s children and will provide examples of such disparities.

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<sup>7</sup> Nicholson, *supra* note 5.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See Debrina Washington, *What to Expect During Child Custody Proceedings*, VERYWELL FAMILY (May 21, 2020), <https://www.verywellfamily.com/what-to-expect-during-child-custody-proceedings-2997838>.

<sup>12</sup> OHIO REV. CODE ANN. § 3109.051 (West 2023).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

Part II will explore the change in family dynamics, the expertise disparity of domestic relations and juvenile judges, and the trend toward unified courts throughout the country.

Part III will explore ways to resolve the issues presented in this Note, look at potential legislative and judicial solutions in Ohio, and conclude that the only viable solution is to legislatively combine the domestic relations and juvenile child custody jurisdictions under the domestic relations court.

This Note will use the term “family court” to discuss a court that handles all child custody, while keeping a separate juvenile court for abuse, dependency, neglect, criminal matters, and any other children’s issue that do not fall under child custody. For purposes of this Note, “domestic relations court” means a court that handles divorces and dissolutions involving the custody of children of married parents (whether or not they are still married), and “juvenile court” means a child-centered court that handles custody of children whose parents are not, and have never been, married to each other. Any adjustments to these definitions for the three types of court will be specified as they occur.

## II. BACKGROUND OF THE JUVENILE AND DOMESTIC COURTS IN OHIO

This Part will discuss the historical background of Ohio’s domestic relations and juvenile courts. It will explore the procedural and substantive differences that lead to the inconsistencies in these courts’ treatment of Ohio’s children. Then, it will provide some examples of these differences, inconsistencies, and disparities.

### A. *Background of the Juvenile and Domestic Relations Courts*

In 1902, Cuyahoga County, Ohio created the second juvenile-specific court in America.<sup>15</sup> The Cuyahoga County Juvenile Court was created by a city solicitor and the general secretary of the YMCA.<sup>16</sup> These two men created the court to counter “the poor condition of children in the jails of the county.”<sup>17</sup> Once established, “[t]he early court, believing in treatment and rehabilitation rather than punishment, found employment for neglected juveniles under 16, appointed guardians, operated a boarding home, and established the CLEVELAND BOYS SCHOOL [sic] at Hudson.”<sup>18</sup>

But since that time, other states have taken the lead from Ohio in determining that matters of the family require specialized courts.<sup>19</sup> Several of these other states have created unified family courts (where all child custody matters are handled by a single court), or at least have unified their statutes to treat all children the same.<sup>20</sup>

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<sup>15</sup> CASE W. RESV. UNIV., *Cuyahoga County Juvenile Court*, <https://case.edu/ech/articles/c/cuyahoga-county-juvenile-court> (last visited Sept. 3, 2023).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> NAT’L CTR. FOR JUV. JUST., OHIO FAMILY COURT FEASIBILITY STUDY 3 (NCJJ, 1997).

<sup>20</sup> See *infra* Part III.C.

In Ohio, the domestic relations court and the juvenile court each have jurisdiction over custody matters in different circumstances. The jurisdiction of the domestic relations court tends to stem from custody matters related to divorces,<sup>21</sup> while the juvenile court has jurisdiction over all other matters not related to children born during a marital relationship.

In the early twentieth century, Ohio was one of the first States to create a court directed at handling family matters.<sup>22</sup> This court did not have a specific name when created, but in effect was an “enhanced domestic relations court,” “with jurisdiction over divorce, alimony matters, delinquency, dependency, neglected and crippled children, adults contributing to or tending to cause delinquency or dependency, and failure to provide support.”<sup>23</sup>

Judge Charles Hoffman was the original presiding judge when Ohio’s first family court was created. Judge Hoffman did not want the family court to replace the juvenile court. Rather, he wanted them to work in concert.<sup>24</sup> According to Judge Hoffman, “[J]uvenile courts were founded and organized not as criminal courts, but as child saving institutions from which were to be excluded all semblances of criminal procedure and penal methods.”<sup>25</sup> Judge Hoffman later wrote that his vision of family court is one that uses “the juvenile court [as] the foundation.”<sup>26</sup> It appears that Judge Hoffman wanted to usher the care of children and families into a new era by separating the family-centered concept of the domestic relations court from the juvenile court.<sup>27</sup>

The Ohio domestic relations court is the closest thing Ohio currently has to the concept of a family court as originally contemplated by Judge Hoffman.<sup>28</sup> The current domestic relations court in Ohio does not have jurisdiction over delinquency, dependency, neglected or crippled children, and adults who cause or contribute to

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<sup>21</sup> For purposes of this argument, divorces and dissolutions that do not involve children are excluded.

<sup>22</sup> NAT’L CTR FOR JUV. JUST., *supra* note 19, at 1.

<sup>23</sup> *Id.* at 1–2 (showing the term “enhanced domestic relations court” is a term used by the authors of the study).

<sup>24</sup> Charles W. Hoffman, *Proceedings of the National Conference of Social Work* 125–26 (1918), reproduced in H. ROBERT BREMMER, *CHILDREN & YOUTH IN AMERICA: A DOCUMENTARY HISTORY* 543 (1971).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> See generally *id.*

<sup>28</sup> See OHIO REV. CODE ANN. § 2151.233(A) (West 2019) (establishing that the domestic relations court has jurisdiction if “[t]he child’s parents are married to each other[,] [t]he child’s parents were married to each other but no longer are married to each other and there is an existing order for custody or support regarding the child or another child of the same parents over which the juvenile court does not have jurisdiction[,] [or] [t]he determination is ancillary to the parents’ pending or prior action for divorce, dissolution of marriage, annulment, or legal separation”).

juvenile delinquency or dependency.<sup>29</sup> Several of these issues now fall under the jurisdiction of the juvenile court.<sup>30</sup>

Domestic relations hearing officers (typically judges and magistrates) mainly see cases that are related to the breaking up of a family. Domestic relations courts have jurisdiction over marriage dissolutions or terminations with and without children,<sup>31</sup> change of custody,<sup>32</sup> child support, visitation,<sup>33</sup> domestic violence cases (i.e., civil protection orders),<sup>34</sup> parentage, Uniform Family Support Act (U.I.F.S.A.) cases,<sup>35</sup> and other family matters.<sup>36</sup>

Unlike the domestic relations court, juvenile courts have a wide breadth of jurisdiction.<sup>37</sup> Although juvenile courts do not have concurrent jurisdiction of most cases with the domestic relations court, both courts see some similar cases. In addition to the custody and related matters that domestic relations courts see,<sup>38</sup> hearing officers in the juvenile court handle issues like abuse,<sup>39</sup> neglect, dependency, unruly child,

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<sup>29</sup> See NAT'L CTR. FOR JUV. JUST., *supra* note 19 for a detailed explanation of Judge Hoffman's initial court.

<sup>30</sup> See OHIO REV. CODE ANN. § 2151.23 (West 2023).

<sup>31</sup> Divorce typically includes two legal procedures for the ending of the relationship: dissolution and termination. For purposes of this Note, their substantive differences are irrelevant. See *Dissolution of Marriage*, CUYAHOGA COUNTY DOMESTIC RELATIONS COURT, <https://domestic.cuyahogacounty.us/en-US/Dissolution-Marriage.aspx> (last visited July 23, 2023).

<sup>32</sup> This occurs when there is an order of custody issued by a court and one (or both) of the parents petitions the court for a change. See OHIO REV. CODE ANN. § 3109.04 (West 2011).

<sup>33</sup> This is related to how much time a child spends with each parent. See OHIO REV. CODE ANN. § 3109.051 (West 2023) for a listing of the determining factors for visitation.

<sup>34</sup> While domestic violence cases are a substantial and important piece of the domestic relations landscape, an analysis of these issues as they relate to the two courts at issue here is beyond the scope of this Note. Domestic violence prosecutions are not handled in the domestic relations court.

<sup>35</sup> The Uniform Interstate Family Support Act (U.I.F.S.A) requires states to handle child support cases where parents are not located in the same state. *Child Support*, OHIO DEP'T OF JOBS AND FAM. SERV., <https://jfs.ohio.gov/child-support> (last visited Aug. 31, 2023); see also 42 U.S.C. § 666(f).

<sup>36</sup> For a more complete listing of the domestic relations jurisdiction, see OHIO REV. CODE ANN. § 3105.011 (West 2019); see also State of Ohio Cts. of Common Pleas, Domestic Rel. Div., *Caseload and Performance Measures*, OHIO SUP. CT., <https://analytics.das.ohio.gov/t/SCPUB/views/FormB-judge-state-PROD/CaseloadandPerformance> (last visited Sept. 3, 2023).

<sup>37</sup> See OHIO REV. CODE ANN. § 2151.23 (West 2023).

<sup>38</sup> For a complete description of custody and related matters, see *supra* note 6.

<sup>39</sup> This Author finds it important to note that domestic violence is different than child abuse in Ohio (and perhaps in other states). Under OHIO REV. CODE ANN. § 2919.25 (West 2019), domestic violence is defined as harm or threat of harm to a family or household member. "[T]he

delinquency, and criminal cases.<sup>40</sup> The Ohio legislature has allowed juvenile courts to transfer jurisdiction of child custody to domestic relations courts.<sup>41</sup> However, the juvenile court does maintain the ability to revisit and revise a child custody order from the domestic relations court if a child is found to be “delinquent, unruly, abused, neglected, or dependent.”<sup>42</sup>

Not all counties utilize separate courts for child custody<sup>43</sup>—in part because the Ohio Constitution allows for counties to have either a single or a split court.<sup>44</sup> An individual county’s decision to have a single court or split courts does not appear to

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CDC categorizes abuse as ‘acts of commission,’ or things someone does that cause harm to a child.” Ohio Children’s Trust Fund, *Ohio Child Abuse and Neglect Definitions*, <https://octf.ohio.gov/what-we-do/the-problem/child-abuse-and-neglect-definitions> (last visited Sept. 3, 2023).

<sup>40</sup> *Supra* note 37; *see also* State of Ohio Cts. of Common Pleas, Juv. Div., *Caseload and Performance Measures*, OHIO SUP. CT., <https://analytics.das.ohio.gov/t/SCPUB/views/FormD-judge-state-PROD/CaseloadandPerformance> (last visited Sept. 3, 2023).

<sup>41</sup> *See* OHIO REV. CODE ANN. § 2151.235 (West 2019). While no direct statutory authority exists for domestic relations courts to transfer jurisdiction to juvenile courts for child custody and related matters, the analysis of Ohio House Bill 595 “[s]tates that nothing in the act can be construed to prevent a domestic relations court from certifying a case to a juvenile court in certain situations, and a juvenile court’s consent is not required for certification.” OHIO LEGIS. SERV. COMM’N FINAL ANALYSIS, Sub. H.B. 595 132nd General Assembly (As Passed by the General Assembly) at 4. It stands to reason that the vested power in the juvenile court to certify a case to the domestic relations court would most likely occur in a situation where there was a juvenile court custody case and the parents got married, thus bringing the family unit under the purview of the domestic relations court. If those parents then got divorced, the juvenile court would likely transfer custody to the domestic relations court to ensure that the family unit was handled as one, as opposed to something that was fractured with different courts holding different jurisdictions over the family.

<sup>42</sup> Katie McBride, *HB 595 and its Effects on Custody and Child Support*, CLERMONT CTY. DOMESTIC REL. CT. (June 17, 2019), <https://domesticcourt.org/wp-content/uploads/sites/36/2019/06/2019attorneystaffseminarpresentations.pdf>. Although Ohio law views a child custody proceeding as many things, this Note does not advocate for removing the jurisdiction of juvenile courts to adjudicate abuse, neglect, and dependency. *See* OHIO REV. CODE ANN. § 3127.01(B)(4) (“‘Child custody proceeding’ means a proceeding in which legal custody, physical custody, parenting time, or visitation with respect to a child is an issue. ‘Child custody proceeding’ may include a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, parentage, termination of parental rights, or protection from domestic violence. ‘Child custody proceeding’ does not include a proceeding regarding juvenile delinquency, contractual emancipation, or enforcement pursuant to sections 3127.31 to 3127.47 of the Revised Code.”). This power can be exercised by only the juvenile court in these situations.

<sup>43</sup> There are at least eleven counties that have a single court to handle all custody matters. *See Courts by County*, OHIO SUP. CT., <https://www.supremecourt.ohio.gov/courts/judicial-system/ohio-trial-courts/#Court-List> (last visited Sept. 3, 2023).

<sup>44</sup> *See* OHIO CONST. art. IV, § 4(A) (1973) (“There shall be a court of common pleas and such divisions thereof as may be established by law serving each county of the state.”).

be correlated to population density, urban vs. rural, or any other simple demographic issue.<sup>45</sup> Rather, it appears to be a local decision.<sup>46</sup>

*B. Procedural and Substantive Differences that Lead to Inconsistency*

Once jurisdiction in either the domestic relations court or juvenile court has been determined for a particular case, there is a significant difference in how the case will progress. One reason for the difference is that, in Ohio, domestic relations and juvenile courts are able to set their own judge-made rules within each particular county that has separate courts.<sup>47</sup> In other words, in a county with split courts, domestic relations judges can make one set of rules and juvenile judges can make a completely separate set of rules—with no regard for what the other court has done.

For example, the Clermont County Domestic Relations Court requires “objections to a magistrate’s decision based on a factual finding must be supported by a complete written transcript.”<sup>48</sup> But, the Clermont County Juvenile Court allows the parties to file an agreed statement of facts, in lieu of a written transcript of the proceedings.<sup>49</sup> While this may seem to be a small detail, the Clermont County Domestic Relations Court not allowing for an agreed statement of facts adds a financial hurdle that parties must overcome by ordering a transcript of the proceedings.

In Cuyahoga County, the Juvenile Court allows the assigned judge to deny a request that a court reporter be used,<sup>50</sup> whereas the Domestic Relations Court states “[n]o hearing shall proceed without the presence of a court reporter if requested by either party.”<sup>51</sup> Although this seems like a small detail, the necessity of court reporters to document the proceedings is paramount to the judicial process. Cuyahoga County Juvenile Court’s rule regarding court reporters adds unnecessary delays into the proceedings.

As a separate example of differing practices between the courts, in the Cuyahoga County Juvenile Court, “[a]s a condition of obtaining custody, an individual may be required to sign a waiver for a background check.”<sup>52</sup> Yet the Cuyahoga County Domestic Relations Court has no similar rule. By indicating that a criminal record may

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<sup>45</sup> See *Courts by County*, *supra* note 43. The counties that maintain a single court run the gamut of population, from Stark County with more than three hundred seventy thousand (370,000) residents to Henry County with a mere twenty-seven thousand (27,000) residents. See *Ohio Demographics*, CUBIT, [https://www.ohio-demographics.com/counties\\_by\\_population](https://www.ohio-demographics.com/counties_by_population) (last visited Sept. 3, 2023).

<sup>46</sup> See *infra* Part III.B.

<sup>47</sup> OHIO JUV. R. 45; OHIO CIV. R. 83. This Author does not suggest that the ability to set local rules should be removed; rather, this Note suggests that combining the courts will remove the inconsistencies between minimum visitation orders.

<sup>48</sup> CLERMONT CTY. DOMESTIC RELATIONS CT. LOC. R. Title F, DR 38.

<sup>49</sup> CLERMONT CTY. DOMESTIC RELATIONS CT. LOC. R. 19 (A)(1).

<sup>50</sup> CUYAHOGA CTY. JUV. CT. LOC. R. 34(C).

<sup>51</sup> CLERMONT CTY. DOMESTIC RELATIONS CT. LOC. R. (9).

<sup>52</sup> CUYAHOGA CTY. JUV. CT. LOC. R. 42(C).

be an integral issue in child custody, the Cuyahoga County Juvenile Court appears to treat those with a criminal past differently than the Cuyahoga County Domestic Relations Court.

These rules are just a small set of examples that lead to substantive differences in the conclusions that can be drawn by both courts. Even where situations might be similar on paper, a child's visitation may be vastly different, solely depending on the fact that one set of parents was married when a custody case was initiated while another set was not.<sup>53</sup>

Recall Sophia and Jackson and the journey they are being taken on by their parents through the custody process. Depending on the county Sophia and Jackson live in, unless their respective parents can agree to a visitation schedule, both children will likely be subjected to different visitation schedules.<sup>54</sup> It is possible that even if Sophia and Jackson's respective parents try to negotiate their own visitation schedule, this negotiation may be heavily influenced by the judge-made minimums they face in court.<sup>55</sup> All of the local parenting schedules for visitation in Ohio are judge-made rules, which allows for the disparities seen by Jackson and Sophia.<sup>56</sup>

Using Cuyahoga County's standard parenting schedule for the Domestic Relations Court, Sophia will spend a minimum of 2,418 hours<sup>57</sup> and a total of 130 overnights with her non-residential parent<sup>58</sup> per year because her parents are getting divorced. In contrast, Jackson will spend 1,760 hours and a total of 52 overnights with his non-residential parent per year because his parents were not married, and the case is in the

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<sup>53</sup> This may give rise to a federal equal protection argument under the Fourteenth Amendment, as well.

<sup>54</sup> See *Standard Parenting Time Schedule*, CUYAHOGA CTY. JUV. CT., [http://juvenile.cuyahogacounty.us/pdf\\_juvenile/en-US/Misc/StandardParentingTimeSchedule.pdf](http://juvenile.cuyahogacounty.us/pdf_juvenile/en-US/Misc/StandardParentingTimeSchedule.pdf) (last visited Sept. 3, 2023).

<sup>55</sup> Stacey Barrett, *Ohio Custody Laws*, DIVORCENET, <https://www.divorcenet.com/resources/ohio-child-custody-laws.html> (last visited July 23, 2023).

<sup>56</sup> *Id.*

<sup>57</sup> For purpose of calculating the number of hours of visitation each parent is given, this Note uses 8 a.m. as the end of visitation time after an overnight visit. Vacation, holiday, and additional ordered parenting time is not included. See *Parenting Time Guidelines for the Non-Residential Parent*, CUYAHOGA CTY. DOMESTIC RELS. CT., [https://domestic.cuyahogacounty.us/pdf\\_domestic/en-US/Parenting/PARENTING%20TIME%20GUIDELINES%20EFF%203-1-2014\\_1.pdf](https://domestic.cuyahogacounty.us/pdf_domestic/en-US/Parenting/PARENTING%20TIME%20GUIDELINES%20EFF%203-1-2014_1.pdf) (last visited Sept. 3, 2023).

<sup>58</sup> Ohio defines non-residential parent as "[a] parent who is not primarily allocated the parental rights and responsibilities for the care of a child and who is not designated as the residential parent and legal custodian of the child under an order that is issued pursuant to this section on or after April 11, 1991, and that does not provide for shared parenting is the 'parent who is not the residential parent,' the 'parent who is not the residential parent and legal custodian,' or the 'noncustodial parent' of the child under the order." OHIO REV. CODE ANN. § 3109.04(L)(4) (West 2011).

juvenile court.<sup>59</sup> This means that Sophia receives more than 650 additional hours with her non-residential parent than Jackson and nearly 80 additional bedtimes per year.<sup>60</sup>

The very nature of the parental relationship sets custody situations up for inconsistencies.<sup>61</sup> Although child custody matters in both domestic relations and juvenile courts are determined under a single statute,<sup>62</sup> there is no consistency required by the jurisdictional statute for either court as they grant visitation to parents, both initially and throughout the child's growth to the age of majority.<sup>63</sup> From the outset of a custody case, the domestic relations courts immediately view both parents to have equal rights to custody of the child,<sup>64</sup> whereas, at least initially, juvenile courts are to view the mother as the only parent in the child's life *until* custody is determined.<sup>65</sup> This arbitrary stance does not serve justice, nor does it help Sophia or Jackson have a fair outcome.

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<sup>59</sup> For purposes of this calculation, only standard parenting time is calculated. Vacation, holidays, and additional allowed parenting time are not included. *See supra* note 57.

<sup>60</sup> To be clear, this Note is not advocating that all counties have the same visitation guidelines (although some other states mandate statewide standards). Instead, it advocates that each county eliminates the sheer disparity in visitation schedules based upon whether the parents are/were married or not. Eliminating the disparate court jurisdictions would help to alleviate the vast difference across the different family situations by standardizing the visitation schedules for these children.

<sup>61</sup> *See* OHIO REV. CODE ANN. § 3109.042(A) (West 2015) (“An unmarried female who gives birth to a child is the sole residential parent and legal custodian of the child until a court of competent jurisdiction issues an order designating another person as the residential parent and legal custodian. A court designating the residential parent and legal custodian of a child described in this section shall treat the mother and father as standing upon an equality when making the designation.”).

<sup>62</sup> Regardless of the court, custody is determined under OHIO REV. CODE § 3109.04 (West 2011). Visitation is determined under OHIO REV. CODE § 3109.051 (West 2023). Child support is determined under OHIO REV. CODE § 3119.01 (West 2021).

<sup>63</sup> *See* OHIO REV. CODE ANN. § 3109.03 (West 1991) for domestic relations courts and OHIO REV. CODE ANN. § 3109.042(A) (West 2015) for juvenile courts.

<sup>64</sup> *See* OHIO REV. CODE ANN. § 3109.03 (West 1991).

<sup>65</sup> *See* OHIO REV. CODE ANN. § 3109.042 (West 2015). This Note does not take a position on the substantive presumption of an unmarried mother being the sole residential parent and custodian of a child prior to a custody determination. However, this Note does suggest that given the nuances of child custody, domestic relations courts, as a family centered court, are better equipped to handle such cases overall and create a substantive presumption supported by its expertise. This Note selects the domestic relations court, as one of “family” concept, as the logical court to have jurisdiction over these matters. *See also* Lee v. Whitney, 2020-Ohio-978, 152 N.E.3d 1036, 1040–41 (Ohio Ct. App. 2020) (“Even though the mother [of J.K.] may have had custody via operation of law, there is no presumption in her favor when an original order of custody is sought.”) (citing *In re J.K.*, 2014-Ohio-5502, at ¶¶ 25–27 (Ohio Ct. App. 2014)). *See also infra* Part III.B.

C. *Examples of How Courts in the Same Counties Create Disparities in Visitation*

Several Ohio cases demonstrate the lack of consistency between the two Ohio courts. In *Lindsey v. Lindsey*, the Eleventh District Court of Appeals was tasked with an appeal from the Geauga County Domestic Relations Court after the Lindsey's divorced.<sup>66</sup> In *Lindsey*, the mother of the four-year-old child "alleged [her] husband drinks to excess, is abusive, and was, in effect, an absentee spouse and father."<sup>67</sup> Nevertheless, the Eleventh District upheld the adoption of a shared parenting plan for a divorcing couple.<sup>68</sup> The plan that was upheld by the Eleventh District granted the child visitation with both parents in a "50/50 division."<sup>69</sup> Specifically, the adopted plan was Monday to Wednesday with the mother, Wednesday to Friday with the father, and alternating weekend visitation.<sup>70</sup>

Conversely, in *Cireddu v. Clough*, the Eleventh District was tasked with an appeal from the Lake County Juvenile Court after an initial custody determination for an unmarried couple.<sup>71</sup> In *Cireddu*, the mother "has made many accusations claiming that Cireddu was abusive, without providing any support or evidence to prove these claims."<sup>72</sup> Unlike what was afforded to the parties in *Lindsey*, the Eleventh District upheld the grant of custody to the father with visitation granted to mother "on alternating weekends and one midweek visit per week."<sup>73</sup>

In these Eleventh District cases, the amount of parenting time granted is astoundingly different between the domestic relations court and the juvenile court, despite these cases having substantial factual similarities. In both cases, the mother made claims against the father that the trial court, at a minimum, discounted.<sup>74</sup> In

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<sup>66</sup> See *Lindsey v. Lindsey*, 2019-Ohio-4923, ¶ 2 (Ohio Ct. App. Dec. 12, 2019).

<sup>67</sup> *Id.* at ¶ 30.

<sup>68</sup> *Id.* at ¶ 36.

<sup>69</sup> *Id.* at ¶ 13.

<sup>70</sup> *Id.* at ¶ 40.

<sup>71</sup> *Cireddu v. Clough*, 2010-Ohio-5401 (Ohio Ct. App. Nov. 5, 2010).

<sup>72</sup> *Id.* at ¶ 28.

<sup>73</sup> *Id.* at ¶ 10.

<sup>74</sup> In *Lindsey*, mom "alleged husband drinks to excess, is abusive, and was, in effect, an absentee spouse and father. These allegations were not tempered by any positive or redeeming qualities. The magistrate's finding was supported by wife's testimony." *Lindsey*, 2019-Ohio at ¶ 30. In *Cireddu*, mom "has made many accusations claiming that Cireddu was abusive, without providing any support or evidence to prove these claims." *Cireddu*, 2010-Ohio at ¶ 28. The domestic relations court did not seem to care that mom made accusations backed only by testimony when they gave equal time to mom in *Lindsey*, whereas the juvenile court, incredibly, seems to have held it against Clough in that case. The Eleventh District upheld these rulings, in effect lending credence to such a disparity in outcome and treatment of these mothers.

*Lindsey*,<sup>75</sup> the child gets to spend essentially equal time with both parents. In *Cireddu*, the children spend roughly 7,356 hours per year with their father and 1,404 hours per year with their mother.<sup>76</sup> When looking at overnight time in *Cireddu*, the children go to bed 313 times per year with their father and 52 times per year with their mother.<sup>77</sup> The difference is approximately 5,950 hours and 260 overnights per year.<sup>78</sup>

The Eleventh District Court of Appeals is not the only Ohio appellate district to uphold disparate rulings from domestic relations court versus juvenile court. In *Todd v. Todd*, the Fourth District Court of Appeals was tasked with an appeal after a divorce.<sup>79</sup> In *Todd*, the father was attempting to relocate, and the court issued a 50/50 visitation order.<sup>80</sup> The Fourth District affirmed the Athens County Domestic Relations Court's award of equal parenting time to both parents.<sup>81</sup> Conversely to *Todd*, in *Robinette v. Bryant*, the Fourth District was tasked with an appeal from the Lawrence County Juvenile Court after an initial custody determination for an unmarried couple.<sup>82</sup> In *Robinette*, the mother relocated with the child, but ultimately the father was given custody of the child.<sup>83</sup> The Fourth District upheld the grant of custody to the father with visitation given to mother two weekends per month.<sup>84</sup>

The disparity in hours granted with the child is even more disparate than those in the Eleventh District cases. In *Todd*,<sup>85</sup> the child gets to spend equal time with both parents. In *Robinette*, the children spend roughly 7,600 hours per year with their father and 1,152 hours per year with their mother.<sup>86</sup> When looking at overnight time in *Robinette*, the children go to bed 317 times per year with their father and 48 times per

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<sup>75</sup> See *Lindsey*, 2019-Ohio-4923.

<sup>76</sup> See *Cireddu*, 2010-Ohio at ¶ 10. This calculation assumes a three-hour visitation midweek and forty-eight hours on the alternate weekends. No vacation or holiday time is included in this calculation.

<sup>77</sup> *Id.* This calculation looks only at minimum ordered weekend time and does not include vacation or holiday time in this calculation.

<sup>78</sup> This calculation only includes the minimum ordered parenting time and does not include vacation, holiday, or other parenting time that may have been ordered.

<sup>79</sup> *Todd v. Todd*, No. 18CA26, 2019 WL 175014, at ¶ 1 (Ohio Ct. App. Apr. 1, 2019).

<sup>80</sup> *Id.* at ¶ 3.

<sup>81</sup> *Id.* at ¶ 1.

<sup>82</sup> *Robinette v. Bryant*, 2013-Ohio-2889 (Ohio Ct. App. June 27, 2013).

<sup>83</sup> *Id.* at ¶ 31–33.

<sup>84</sup> *Id.* at ¶ 37. The order also encouraged more time for mother than what was ordered. *Id.*

<sup>85</sup> See *Todd*, 2019 WL 1754014 at ¶ 1.

<sup>86</sup> See *Robinette*, 2013 WL 3376661 at ¶ 37. This calculation assumes a forty-eight-hour weekend visitation. No vacation or holiday time is included in this calculation.

year with their mother.<sup>87</sup> The difference is approximately 6,450 hours and 270 overnights per year.<sup>88</sup>

The disparity in visitation schedules ordered is unfair to Ohio's children<sup>89</sup>—in part because a child does not have a say in their parents' marital status. In 2023, it is much more common for a child's parents to be unmarried.<sup>90</sup> There is no policy-based justification for different courts in the same county having such disparate parenting schedules just because of marital status.<sup>91</sup> Thus, consolidating custody into a single court will help to make a fairer playing field and will allow for more consistency.

While the disparity between the Eleventh and Fourth District cases is shocking, there are other counties in Ohio where the standard minimum visitation schedules are either the same or very similar. For example, Auglaize and Champaign counties have the same visitation orders regardless of the parents' marital status.<sup>92</sup> Auglaize County has a split court with separate Juvenile and Domestic Relations divisions but has decided their children deserve the same visitation schedules.<sup>93</sup> Champaign County has a unified family court, which means that only a single visitation schedule is necessary for the children of that county.<sup>94</sup> It appears that the counties that have a combined court have may have created local rules that ensure the same visitation schedules—regardless of parents' marital status.

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<sup>87</sup> *Id.* This calculation looks only at minimum ordered weekend time and does not include vacation or holiday time in this calculation.

<sup>88</sup> *Id.* This calculation only includes the minimum ordered parenting time and does not include vacation, holiday, or other parenting time that may have been ordered.

<sup>89</sup> As a reminder, this Note is not advocating for any particular substantive rule. Rather, this Note is advocating for each county to have a singular family court that has a consistent standard for all of Ohio's children at issue in a custody matter, which creates more fairness and removes the disparity currently seen.

<sup>90</sup> Jeffrey M. Jones, *Is Marriage Becoming Irrelevant?*, GALLUP (Dec. 28, 2020), <https://news.gallup.com/poll/316223/fewer-say-important-parents-married.aspx>. (“Americans are less inclined now than in recent years to see marriage as critical for couples who have children together or for couples who plan to spend the rest of their lives together.”).

<sup>91</sup> As previously noted, there may be an equal protection argument under the Fourteenth Amendment to the United States Constitution. Such an argument is beyond the scope of this Note.

<sup>92</sup> See AUGLAIZE CTY. DOMESTIC RELATIONS AND JUV. CTS. LOC. R. 28; see also CHAMPAIGN CTY. FAMILY CT. LOC. R. Exhibit B.

<sup>93</sup> AUGLAIZE CTY. DOMESTIC RELATIONS AND JUV. CTS. LOC. R. 28.

<sup>94</sup> The Champaign County Family Court encompasses three different divisions of law: Domestic Relations, Juvenile, and Probate. All three case types are filed, heard, and decided here. When a case is initiated, one of the two Judges is assigned on a random basis. The philosophy of the Family Court is “one Judge, one family.” As such, once a Judge has been assigned at the case initiation phase, that same Judge will remain as the assigned Judge for all future matters involving the family. *Champaign Cty. Family Ct.*, CHAMPAIGN CNTY. FAM. CT., <https://www.ccfamct.us/> (last visited Sept. 3, 2023).

Ohio's children deserve to have their visitation schedules within their own county be the same, lest the disparities shown in *Todd*<sup>95</sup> and *Robinette*,<sup>96</sup> as well as in *Lindsey*<sup>97</sup> and *Cireddu*,<sup>98</sup> will continue to occur and negatively impact Ohio's children.

### III. THE CHANGING LANDSCAPE OF CHILD CUSTODY

This Part will discuss the significant changes in family dynamics and the disparity between the expertise of domestic relations judges and juvenile judges who make decisions about custody and visitation. These are the same judges that make the judge-made visitation rules, at times without the requisite expertise that is necessary to handle family matters. Finally, it will discuss the trend toward unified courts throughout the United States.

#### A. Changes in Family Dynamics and Policy Understandings

Ohio should unify their custody courts because the current split can—and does—cause unjust differences in custody actions.<sup>99</sup> Even if initially well-intended, the split was predicated on what are now antiquated definitions of family.<sup>100</sup> It is also possible that because the courts were not created at the same time, the split in jurisdiction statewide may not have been directly intended by the legislature.<sup>101</sup>

The nature of family has changed over the last century. In 2020, 40.5% of all births were to unmarried mothers,<sup>102</sup> which means that not all children are the product of a traditional marital relationship. So, Ohio courts must evolve to ensure fairness and consistency. This need for fairness and consistency requires that all custody and related matters be handled by the domestic relations court.

As previously described in this Note, the domestic relations court is by both definition and function a family-focused court.<sup>103</sup> Domestic relations hearing officers mainly see cases that are related to breaking up of a family.<sup>104</sup> On the other hand,

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<sup>95</sup> *Todd v. Todd*, No. 18CA26, 2019 WL 175014, at ¶ 3 (Ohio Ct. App. Apr. 1, 2019).

<sup>96</sup> *Robinette v. Bryant*, 2013-Ohio-2889, at ¶¶ 31–33 (Ohio Ct. App. June 27, 2013).

<sup>97</sup> *Lindsey v. Lindsey*, 2019-Ohio-4923, at ¶ 36 (Ohio Ct. App. Dec. 12, 2019).

<sup>98</sup> *Cireddu v. Clough*, 2010-Ohio-5401, at ¶ 10 (Ohio Ct. App. Nov. 5, 2010).

<sup>99</sup> *Todd*, 2019 WL 1754014 at ¶ 1; *see also Robinette*, 2013-Ohio at ¶ 37.

<sup>100</sup> *See OSTERMAN ET AL.*, *supra* note 3; Goldberg & Conran, *supra* note 4 (showing that in 2016 there were approximately 114,000 same-sex couples raising children).

<sup>101</sup> SUP. CT. OF OHIO, OHIO FAM. CT. FEASIBILITY STUDY 48, 50, 122 (2000).

<sup>102</sup> *See OSTERMAN ET AL.*, *supra* note 3.

<sup>103</sup> *See OHIO REV. CODE ANN.* § 2151.233(A) (West 2019).

<sup>104</sup> Domestic relations courts also handle civil domestic violence cases, which are beyond the scope of this Note. For a more complete listing of the domestic relations jurisdiction, *see*

domestic relations courts have jurisdiction over marriage dissolutions or terminations with and without children, change of custody, child support, visitation, domestic violence, parentage, U.I.F.S.A.,<sup>105</sup> and other family matters.<sup>106</sup>

Unlike the domestic relations court, juvenile courts have broad jurisdiction.<sup>107</sup> In addition to custody and related matters,<sup>108</sup> hearing officers in the juvenile court see abuse, neglect, dependency, unruly child,<sup>109</sup> delinquency,<sup>110</sup> and criminal cases.<sup>111</sup> The juvenile court can also revisit and remake a child custody order from domestic relations if a child is found to be “delinquent, unruly, abused, neglected, or dependent.”<sup>112</sup>

When the current jurisdictional split was created, “out-of-wedlock births were notorious and rare. Most pregnancies in unmarried women were rapidly followed by marriage when the pregnancy was discovered (demographers refer to these as ‘bridal pregnancies’).”<sup>113</sup> “If not resolved by marriage, unmarried women who gave birth typically gave up their babies for adoption.”<sup>114</sup>

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OHIO REV. CODE ANN. § 3105.011 (West 2023); *see also* State of Ohio Cts. of Common Pleas, *supra* note 36.

<sup>105</sup> *See supra* note 35.

<sup>106</sup> OHIO REV. CODE ANN. § 3105.011 (West 2019); *see also* State of Ohio Cts. of Common Pleas, *supra* note 36.

<sup>107</sup> *See* OHIO REV. CODE ANN. § 2151.23 (West 2023).

<sup>108</sup> *See supra* notes 61–62 and accompanying text for a complete description of custody and related matters.

<sup>109</sup> *See* OHIO REV. CODE ANN. § 2151.022 (West 2017) (“As used in this chapter, ‘unruly child’ includes any of the following: (A) Any child who does not submit to the reasonable control of the child’s parents, teachers, guardian, or custodian, by reason of being wayward or habitually disobedient; (B) Any child who is an habitual truant from school; (C) Any child who behaves in a manner as to injure or endanger the child’s own health or morals or the health or morals of others; (D) Any child who violates a law, other than division (C) of section 2907.39, division (A) of section 2923.211, division (C)(1) or (D) of section 2925.55, or section 2151.87 of the Revised Code, that is applicable only to a child.”).

<sup>110</sup> “A delinquency is an act that if committed by an adult would be a crime (either a felony or misdemeanor).” VOICES FOR OHIO’S CHILDREN, OHIO’S FAMILY & YOUTH GUIDE: THE FAMILY GUIDE TO THE JUVENILE JUSTICE SYSTEM IN OHIO 4 (2008) <https://www.njjn.org/uploads/digital-library/youthguide.pdf>.

<sup>111</sup> *See* OHIO REV. CODE ANN. § 2151.23 (West 2023); *see also* State of Ohio Cts. of Common Pleas, *supra* note 40.

<sup>112</sup> McBride, *supra* note 42. This Note does not purport to remove the jurisdiction of juvenile courts to adjudicate abuse, neglect, and dependency. *See* OHIO REV. CODE ANN. § 3127.01(B)(4) (West 2005).

<sup>113</sup> *Social Disruptions*, PUB. BROAD. SERV., <https://www.pbs.org/fmc/timeline/ddisruption.htm> (last visited Sept. 3, 2022).

<sup>114</sup> *Id.*

Given the rarity of custody disputes involving unmarried parents in the early-20th century, allowing these cases to be tried in a domestic relations court would have been unheard of.<sup>115</sup> As a result, it may have seemed apropos to place custody decisions in a juvenile court rather than to potentially overburden the domestic relations court. Now that we have more than 100 years of knowledge and clarity, the effects of the complete lack of consistency between the two courts are undeniable.

*B. Disparate Expertise of Domestic Relations and Juvenile Court Judges*

A “family court,” as contemplated by this Note, is a court that deals with divorce, private custody, and related matters.<sup>116</sup> In contrast, the current juvenile court deals with juveniles and their needs, as well as matters involving private custody where a child has unmarried parents.<sup>117</sup> The current domestic relations court deals with divorce, dissolutions, family related matters, and private custody where a child’s parents were married.<sup>118</sup>

In a domestic relations court, the hearing officer handles family-related matters all day long.<sup>119</sup> On the other hand, juvenile courts are not intended to be family courts.<sup>120</sup> A juvenile court hearing officer hears a wide variety of issues,<sup>121</sup> and it is conceivable that that hearing officer may go a significant amount of time without hearing *any* family matter.<sup>122</sup> This leads to a dearth of experience from which the hearing officer may draw upon to issue rulings. “Without adequate specialized judicial education, at best a family court judge gains expertise over time, through hands-on experience or self-education; at worst, outcomes, families, and communities are negatively impacted.”<sup>123</sup> The lack of specialized judicial education illustrates the danger of having a non-expert juvenile court judge handling these matters—especially when standards are already very inconsistent.

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<sup>115</sup> *Id.*

<sup>116</sup> *See supra* Introduction.

<sup>117</sup> *See supra* Introduction.

<sup>118</sup> *See supra* Introduction.

<sup>119</sup> *See* OHIO REV. CODE ANN. § 2151.233(A) (West 2019).

<sup>120</sup> Family court “deals with family related issues” and juvenile court deals with abuse, neglect, adoption, and crimes perpetrated by children. *See What is the Difference Between Children’s Court and Family Court*, JUST. LEGAL GRP., <https://justicelegalgroup.com/difference-childrens-court-family-court/> (last visited Sept. 3, 2023).

<sup>121</sup> *See* OHIO REV. CODE ANN. § 2151.23 (West 2023).

<sup>122</sup> This Note does not suggest that juvenile court hearing officers are incapable of handling family matters, but Ohio’s children deserve the ability to be in front of experienced hearing officers that have the requisite background and experience to properly adjudicate these matters.

<sup>123</sup> NATALIE ANNE KNOWLTON, *THE MODERN FAMILY COURT JUDGE: KNOWLEDGE, QUALITIES & SKILLS FOR SUCCESS* (Inst. for the Advancement of the Am. Legal Sys. 2014), available at [https://www.afcnet.org/Portals/0/PDF/the\\_modern\\_family\\_court\\_judge.pdf](https://www.afcnet.org/Portals/0/PDF/the_modern_family_court_judge.pdf).

A recent study has recommended, among other key things, that there should be minimum background and experience requirements for judges that hear custody and related cases.<sup>124</sup> The study found that “less than 5 percent of states have established specific background and experience requirements” for the relevant sets of judges.<sup>125</sup> The study also found that “[f]or the most part, family court judges reach the bench through election or appointment and without any prerequisite experience handling family law cases.”<sup>126</sup>

Juvenile court judges in states other than Ohio have recognized that they are an integral part of society and have devoted resources to studying how they can be better.<sup>127</sup> One example is the National Council of Juvenile and Family Court Judges *Courting Judicial Excellence in Juvenile Justice: A 50-State Study*, wherein all 50 states were analyzed to determine how their juvenile court (or equivalent) worked.<sup>128</sup>

Massachusetts has the type of specialized requirements that the *Courting Judicial Excellence* study advocates for.<sup>129</sup> The Massachusetts requirements ensure that each hearing officer has the requisite “experience and expertise with youth and families, passion for the work of the juvenile court, and ability and willingness to tackle the complexities associated with juvenile cases.”<sup>130</sup> Similarly, in California, the mentor court program found that “[t]raining staff and judicial officers was cited by some judicial officers and court administrators [for California mentor courts] as being a key step in institutionalizing the unified court program.”<sup>131</sup>

But Ohio, however, has no such requirement for experience or education in family matters. In Ohio, to be a county court judge, a person “shall have been admitted to the practice of law in this state and shall have been engaged, for a total of at least six years preceding the judge's appointment or the commencement of the judge's term, in the practice of law in this state.”<sup>132</sup> The current jurisdictional split in Ohio is consequential for Ohio's children because hearing officers may have little to no

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<sup>124</sup> JOSH WEBER, *COURTING JUDICIAL EXCELLENCE IN JUVENILE JUSTICE: A 50-STATE STUDY* 7 (Leslie Griffin ed., 2022). This study was aimed at juvenile courts, but its lessons are applicable to family courts, including domestic relations courts holding all private custody jurisdiction.

<sup>125</sup> *Id.* at 5.

<sup>126</sup> KNOWLTON, *supra* note 123, at 11.

<sup>127</sup> E.g., *Our History*, NAT'L. CTR. FOR JUV. JUST., <https://www.ncjj.org/About/History.aspx> (last visited Sept. 3, 2023).

<sup>128</sup> WEBER, *supra* note 124, at 4.

<sup>129</sup> *Id.* at 8.

<sup>130</sup> *Id.*

<sup>131</sup> JUD. COUNCIL OF CAL. ADMIN. OFF. OF THE CTS. CTR. FOR FAMS., CHILD. & THE CTS., *UNITED COURTS FOR FAMILIES PROGRAM: MENTOR COURT PROJECT FINAL EVALUATION REPORT* 42 (2007).

<sup>132</sup> OHIO REV. CODE ANN. § 1907.13 (West 2023).

experience in family law when elected.<sup>133</sup> The lack of family matters in some of Ohio's juvenile courts only exacerbates this problem.

### C. *The Trend Toward Unified Courts Elsewhere*

Other states have recognized the need for consistency in custody matters and moved toward unified courts. Indiana is one example of a state that has set up uniformity in custody matters.<sup>134</sup> Since the early 2000s, Indiana has had a singular set of visitation guidelines.<sup>135</sup> In Indiana after 2001, “[t]he legal framework of the child's best interests still guides the courts in the context of legislative guidance, providing a model to the majority of states that do not have parenting time guidelines, but would like to implement them.”<sup>136</sup> Indiana juvenile courts have exclusive jurisdiction for determining the paternity of a child;<sup>137</sup> but, Indiana allows for concurrent jurisdiction between juvenile and other courts when multiple substantive areas of law are relevant to a single case.<sup>138</sup> By allowing concurrent jurisdiction under an overarching set of laws holding those courts to the same standards, Indiana's children are treated equally and fairly, no matter their parents' marital status.<sup>139</sup>

Unlike in Ohio, Nevada has a belief in joint custody, regardless if the parents had been married or not.<sup>140</sup> Nevada created a family court in the early 1990s<sup>141</sup> that is a

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<sup>133</sup> See KNOWLTON, *supra* note 123. Ohio should also require specific continuing education for hearing officers handling custody and related matters to alleviate some of the negative impacts caused by the lack of experience and education in the specific needs of the population being served by the Courts handling custody and related matters.

<sup>134</sup> IND. CODE § 31-12-1-4 (1997) (“(a) Whenever a domestic relations court is established under this chapter, the domestic relations court has jurisdiction over all proceedings in the following causes of action: (1) Dissolution of marriage. (2) Separation. (3) Annulment. (4) Child support. (5) Paternity. (b) A domestic relations court has jurisdiction that other courts in Indiana have over the causes of action listed in subsection (a). A domestic relations court may dispose of the causes of action listed in subsection (a) in the manner provided by statute for those causes of action. However, this chapter grants supplemental powers to domestic relations courts to aid the court in determining the difference between the parties and in protecting the welfare and rights of the child or children involved.”).

<sup>135</sup> See, e.g., Julie E. Artis & Andrew V. Krebs, *Family Law and Social Change: Judicial Views of Joint Custody, 1998-2011*, 40 L. & SOC. INQUIRY 723, 728 (2015).

<sup>136</sup> Margaret Ryznar, *The Empirics of Child Custody*, 65 CLEV. ST. L. REV. 211, 229–30 (2017).

<sup>137</sup> IND. CODE § 31-30-1-1(a)(3) (2022).

<sup>138</sup> IND. CODE § 31-30-1-12 (2017); see also IND. CODE § 31-30-1-13 (2017). Jurisdiction between the courts ebbs and flows depending on the needs of the child and family.

<sup>139</sup> See Artis & Krebs, *supra* note 135.

<sup>140</sup> NEV. REV. STAT. § 125C.002 (2015).

<sup>141</sup> HUNTER HURST, NEVADA DISTRICT COURT, FAMILY DIVISION ASSESSMENT REPORT 4, 8 (2019). The unified family court in Nevada is only in Washoe and Clark Counties. *Id.* at 8.

model for states “considering adopting a family division operating model in the future.”<sup>142</sup> Interestingly, one of the study’s recommendations was to create a specific office for state support akin to the Supreme Court of Ohio’s Office of Court Services, Children and Families Section.<sup>143</sup> The Ohio Office of Court Services is valuable for courts but would be even more so if the fractured jurisdiction were resolved. By combining jurisdictions and requiring the same minimum visitation schedules for the children living in the same county, the Office could be better positioned to educate and assist courts. Currently, with the fractured and disparate visitation schedules, the Office appears to be handicapped in what they can do given that courts within the same county have such differing views on the needs of the children in their jurisdiction.

California began consolidating into a family court in the early 2000s.<sup>144</sup> Because of both states having similar local government structures, California may be the most appropriate state to compare with Ohio<sup>145</sup> regarding efforts to make a consolidated family court.<sup>146</sup> A 2007 study found that “coordinating related family and juvenile court cases results in a variety of benefits for the court, the bench, and litigants.”<sup>147</sup> Unlike Ohio, California believes both parents “are equally entitled to the custody of the child.”<sup>148</sup>

The American Bar Association (“ABA”) has recognized the benefit of, and need for, change in domestic relations / family court. As a result, the ABA recommended the establishment of unified family courts in all jurisdictions.<sup>149</sup> The ABA recommendation sought to “streamline the tasks judges perform and provide better services to children and families.”<sup>150</sup> From 2000 to 2003, the number of states with a

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<sup>142</sup> *Id.* at 4.

<sup>143</sup> *Id.* at 6.

<sup>144</sup> JUD. COUNCIL OF CALIFORNIA ADMIN. OFF. OF THE CTS. CTR. FOR FAMS., CHILD. & THE CTS., UNIFIED COURTS FOR FAMILIES DESKBOOK, A GUIDE FOR CALIFORNIA COURTS ON UNIFYING AND COORDINATING FAMILY AND JUVENILE LAW MATTERS vii (2004).

<sup>145</sup> “The California constitutional provision which empowers ‘any county, city, town, or township to make and enforce within its limits such local, police, sanitary, and other regulations as are not in conflict with general laws’ has been either borrowed verbatim or paraphrased in the constitutions of Washington, Idaho, Ohio, Utah, and Louisiana.” Kenneth E. Vanlandingham, *Municipal Home Rule in the United States*, 10 WM. & MARY L. REV. 269, 290 (1968).

<sup>146</sup> CAL. CONST. art. XI, § 3(a); OHIO CONST. art. XVIII, § 7. A discussion of home rule is beyond the scope of this Note.

<sup>147</sup> JUD. COUNCIL OF CAL. ADMIN. OFF. OF THE CTS. CTR. FOR FAMS., *supra* note 131, at 45.

<sup>148</sup> CAL. FAM. CODE § 3010(a) (West 2023).

<sup>149</sup> American Bar Association, *America’s Children at Risk: A National Agenda for Legal Action*, 27 FAM. L.Q. 433, 445 (1993); *see also* Paul A. Williams, *A Unified Family Court for Missouri*, 63 U.M.K.C. L. REV. 383, 384 (1995).

<sup>150</sup> American Bar Association, *supra* note 149.

specifically labeled family court increased from thirty-two to thirty-seven.<sup>151</sup> During the same period, the number of states with no activity towards consideration of family courts dropped.<sup>152</sup>

Despite this recommendation, many states have failed to combine jurisdictions into a unified family court, for a variety of reasons.<sup>153</sup> It appears that Ohio remains an outlier by maintaining the split of jurisdiction. Ohio should finally heed the ABA and the significant research into the unified family court. Accordingly, Ohio should combine child custody jurisdiction into a unified court under the domestic relations banner.<sup>154</sup> Failure to do so will lead to continued inequity, where a child across the street from another is treated differently based solely on whether their parents had been married. By having such disparate visitation orders, a child is effectively being told that they do not matter as much as another child due to decisions they had no say in, namely: marital status and the continuation of relationships.

#### IV. TAKING OHIO'S COURTS FROM UNSTABLE TO STABLE

This Part will discuss what Ohio's courts have done and can still do to resolve the issues faced by Ohio's children that are caused—at least partly—by the split jurisdiction of Ohio's courts. It will discuss what, if anything, Ohio's voters can do to resolve the fractured court system. Further, it will explore what the Ohio legislature has attempted to do and discuss how the best solution is to legislatively merge the courts.

##### *A. What Ohio Courts Have Done and What Can They Do?*

##### 1. Studying Potential Reforms to the Child Custody Jurisdictions of Ohio's Courts

The concept of a singular family court is not new; it has been discussed in Ohio and other states for many years.<sup>155</sup> In fact, “[t]he Cincinnati Domestic Relations Division’s first Judge, Charles W. Hoffman, chaired a National Probation Association committee on Domestic Relations Courts in 1918, which issued a report that discussed the need for the juvenile court to become an integral part of the ‘family court.’”<sup>156</sup>

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<sup>151</sup> See HUNTER HURST, JR., NATIONAL CTR. FOR JUVENILE JUSTICE SNAPSHOT JULY 2000 (2000); see also HUNTER HURST, JR., NATIONAL CTR. FOR JUVENILE JUSTICE SNAPSHOT (2003). There is no definitive definition for family court, but this Author uses the term to showcase a court where family matters such as divorce, custody, visitation, and related matters are handled.

<sup>152</sup> See NATIONAL CENTER FOR JUVENILE JUSTICE SNAPSHOT JULY 2000, *supra* note 151; see also NATIONAL CENTER FOR JUVENILE JUSTICE SNAPSHOT (2003), *supra* note 151. The National Center for Juvenile Justice has not published an update since August.

<sup>153</sup> The multifactorial reasoning behind the failure to heed the recommendation is beyond the scope of this Note.

<sup>154</sup> Under the proposed schema, the Juvenile Court maintains jurisdiction over custody cases involving either the state or local Department of Children’s Services. This proposal only implicates private custody matters, not those involving the State of Ohio removing parental rights. See *supra* pp. 4–5.

<sup>155</sup> See generally American Bar Association, *supra* note 149.

<sup>156</sup> NAT’L CTR. FOR JUV. JUST., *supra* note 19, at 2.

Unfortunately, this discussion did not go anywhere in Ohio, despite Judge Hoffman's importance and leadership.

Due to the work of a group of Ohio judges beginning in the 1980s, some courts looked at "the feasibility of the family court approach."<sup>157</sup> "In a study by the Ohio Supreme Court, it was reported that about half of Ohio judges and magistrates surveyed during the study believed a family court administrative structure could improve the efficiency and effectiveness of dealing with juvenile and family cases in the Ohio court system."<sup>158</sup> In the wake of the study, Ohio's counties have created four types of family court via "introduction of local interest legislation to reorganize Ohio courts in each county."<sup>159</sup> These types of family courts have always been available under the Ohio Constitution.<sup>160</sup> In 2009, "[s]even counties combine[d] domestic relations and juvenile cases in one court."<sup>161</sup> As of 2022, that number is eleven.<sup>162</sup> Consolidation of custody into the domestic relations court<sup>163</sup> would allow for "a specialty court for extraordinary family events (juvenile court) and for more common life change events (domestic court)."<sup>164</sup>

Richland County previously had a fully combined court wherein all family and juvenile matters were handled.<sup>165</sup> However, Richland County removed the juvenile court and created it as a separate entity with jurisdiction over juvenile matters not related to custody.<sup>166</sup> Given the fundamental unfairness in the treatment of parents based upon marital status and the astounding levels of difference between the standard minimum orders of each Court, Richland County's reforms are commendable.

In 2001, a publication funded by the Ohio Supreme Court discussed the push for a unified family code.<sup>167</sup> This Note has explained that the issues faced by Ohio's children are partly caused by statutory schemes.

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<sup>157</sup> Hunter Hurst IV, *Ohio Family Courts*, CHILD. FAM.'S. AND THE CT.'S, OHIO BULL., vol. 1, 2009, at 1, 2.

<sup>158</sup> *Id.* at 2.

<sup>159</sup> *Id.* at 3. The four types of family court are: 1) one judge for all cases; 2) probate and juvenile combined in a single court; 3) domestic relations and juvenile combined in a single court; 4) and probate, domestic relations, and juvenile in a single court.

<sup>160</sup> See OHIO CONST. art. IV, § 5(B).

<sup>161</sup> Hurst IV, *supra* note 157, at 3.

<sup>162</sup> *Courts by County*, *supra* note 43.

<sup>163</sup> Under the Ohio Constitution, Ohio's courts have always had the power to combine jurisdiction—they have just chosen not to. See OHIO CONST. art. IV, § 5(B).

<sup>164</sup> Hurst IV, *supra* note 157, at 11.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> Hunter Hurst, Jr., *A Family Code for Ohio*, OHIO FAM. CT. BULL., Spring 2001, vol. 2, issue 2, at 2.

To make matters worse, the problems seemed to compound each year as statutory provisions in one realm of family jurisdiction are modified with seemingly insufficient attention toward how the changes impact other sections of Ohio family law. The net result over time produces the symptoms that give rise to family courts as a solution.<sup>168</sup>

In effect, the Ohio Supreme Court study found that, as piecemeal changes occur with statutory schemes, more issues are created that require a solution: a domestic relations court that handles private custody matters for all of Ohio's children.<sup>169</sup>

While connected in theory, Ohio court systems are mostly independent of each other.<sup>170</sup> What this means is that the Ohio Supreme Court has some say over the lower courts but cannot direct all common pleas courts to have a unified family court.<sup>171</sup> Ohio has permitted each county to determine how to best deploy its own judiciary, which has caused "an organic folding and splintering of court divisions."<sup>172</sup>

## 2. Addressing the Concerns of Ohio's Judges.

To judicially resolve the jurisdictional issues, all local courts would need to agree to create their own family courts. Such a change would allow counties to experiment with combined jurisdiction, such as in Richland County.<sup>173</sup> However, the reticence to change from local courts is a significant impediment standing in the way of progress.<sup>174</sup> The idea of family court consolidation has met resistance from Ohio's judges and magistrates due to a fear that such a change "would result in massive judicial bureaucracies that would be unwieldy, difficult to manage and that these public institutions would not be able to keep the concerns of families paramount and serve these families in a user-friendly manner as envisioned in the literature."<sup>175</sup>

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<sup>168</sup> *Id.* at 2. The statutory issues in Ohio are common across America. *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> Gregory J. Helemba et al., *Ohio Family Court Feasibility Study Summary of Major Recommendations*, NAT'L CTR. FOR JUV. JUST., Apr. 8, 1997, at 5. Some states have a unified court system, while others, such as Ohio, have a largely independent court system.

<sup>171</sup> "[A] state's judiciary stands alone in being expected to function simultaneously as a single branch and a single agency throughout a state and having the authority to achieve neither." William Raftery, *Efficiency of Unified vs. Non-Unified Judiciaries: An Examination of Court Organizational Performance*, VA. COMMONWEALTH UNIV., Dec. 2015, at 70. He further found that "[n]o state adopted the entirety of 'unification' as originally envisioned with the establishment of a single court made up divisions with interchangeable judges and a quasi-governor sitting atop." *Id.*

<sup>172</sup> Hurst IV, *supra* note 157, at 3.

<sup>173</sup> *Id.* at 11.

<sup>174</sup> "[T]he impact of these proposals may be muted unless the Supreme Court finds a permanent vehicle for sharing the collective wisdom and experiences of its most effective jurisdictions and transferring these local innovations to other Ohio courts." HUNTER HURST, JR. & GREGG HALEMBA, OHIO FAMILY COURT FEASIBILITY STUDY PHASE II EXECUTIVE SUMMARY: ASSESSMENT OF FAMILY COURT PILOT INITIATIVES xvii, 127 (2002).

<sup>175</sup> Helemba et al., *supra* note 170, at 6.

As previously described in this Note,<sup>176</sup> Indiana previously changed their child custody laws. A study interviewed judges in Indiana, collecting their opinions about the proposed child custody laws, both before the modification to the law and ten years afterward.<sup>177</sup> In the first round of interviews, there were “grave concerns that the child would become a pawn in the parents’ acrimony if they shared legal decision-making power over the child.”<sup>178</sup> But after the change in law, “nearly all judges . . . stated that they are willing to award joint legal custody even if the parents disagree.”<sup>179</sup> The study found that “the overriding theme [in the second round of interviews] was that the benefits outweigh the problems of joint custody.”<sup>180</sup> The author of the study noted that they were surprised at how quickly and fully the judges’ thoughts had changed given that typically the court system changes at a snail’s pace.<sup>181</sup>

As Indiana showed, the fears of the judiciary regarding a potential change to child custody jurisdiction, while understandable, may be unfounded.<sup>182</sup> Ohio’s jurists are unlikely to realize their concerns about being part of an unwieldy judicial bureaucracy and about being unable to keep family’s needs at the forefront of all decisions.

At best, the Ohio Supreme Court can be instructive and supportive to lower courts when it comes to the idea of a family court. In that vein, the Ohio Supreme Court created a central “Family Court Services Office” which works “to assist local courts in their efforts to better coordinate and consolidate various family law dockets.”<sup>183</sup> Unfortunately, the office has not led to a marked increase in consolidation. In other words, the creation of the office has not made the meaningful change.

Between the Ohio Constitution both granting power to each county court of common pleas<sup>184</sup> and limiting the Ohio Supreme Court’s ability to create rules that

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<sup>176</sup> See *supra* Section II.C (providing for a full description of Indiana’s movement from a patchwork of laws to one of uniformity).

<sup>177</sup> See Artis & Krebs, *supra* note 135, at 724.

<sup>178</sup> *Id.* at 735.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.* at 736.

<sup>181</sup> *Id.* at 741.

<sup>182</sup> *Id.* at 735.

<sup>183</sup> Helemba et al., *supra* note 170, at 11; see also HURST JR. & HALEMBA, *supra* note 174, at xvii, 127. The Ohio Supreme Court has an office called the Children & Families Section that “provides technical assistance, training, and policy recommendations to improve court performance in cases involving children and families. The Advisory Committee on Children & Families makes policy recommendations to the Supreme Court of Ohio through the section.” *Children & Families*, OHIO SUP. CT., <https://www.supremecourt.ohio.gov/courts/services-to-courts/children-families/#:~:text=The%20Children%20%26%20Families%20Section%20provides,of%20Ohio%20through%20the%20section> (last visited Aug. 11, 2023).

<sup>184</sup> See OHIO CONST. art. IV, § 4(A) (“There shall be a court of common pleas and such divisions thereof as may be established by law serving each county of the state.”).

affect “any substantive right,”<sup>185</sup> the Ohio Supreme Court does not have any power to mandate court systems to merge child custody jurisdiction over child custody from split to solely domestic relations.

*B. What Can Voters Do Directly?*

In Ohio, voters can participate in direct democracy by either amending the Ohio Constitution<sup>186</sup> or by passing a law directly.<sup>187</sup> The Ohio Constitution requires ten percent of voters to propose an amendment to the Constitution.<sup>188</sup> According to the Ohio Secretary of State, there are approximately eight million registered voters as of October 14, 2022.<sup>189</sup> In order to initiate a change to the Constitution, there would need to be approximately 800,000 eligible voters just to sign the petition to start the constitutional amendment process. This is a hurdle that may be difficult to clear.<sup>190</sup>

In contrast to the significant requirements to amend the Ohio Constitution, only three percent of registered voters are needed to sign a petition to create a law.<sup>191</sup> This means that at least 240,000 registered voters would need to sign the petition to change the law.<sup>192</sup>

A significant impediment to the passage of a voter-initiated law is the fact that only a small percentage of Ohio’s adults are involved in a child custody or related case.<sup>193</sup>

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<sup>185</sup> OHIO CONST. art. IV, § 5(B). It is this Author’s belief that the exercise of jurisdiction over a matter affects substantive rights. This belief is echoed by at least one other author. *See* Leslie M. Kelleher, *Amenability to Jurisdiction As a “Substantive Right”: The Invalidity of Rule 4(k) Under the Rules Enabling Act*, 75 IND. L.J. 1191, 1192 (2000) (although this article was aimed at federal rules and jurisdiction, this Author believes that jurisdiction over a person or a matter affects a substantive right).

<sup>186</sup> OHIO CONST. art. II, § 1a.

<sup>187</sup> OHIO CONST. art. II, § 1b.

<sup>188</sup> *See* OHIO CONST. art. II, § 1a.

<sup>189</sup> *See Ohio Secretary of State Week In Review for the Week Ending October 14, 2022*, OHIO SEC’Y OF STATE (Oct. 14, 2022), <https://www.ohiosos.gov/media-center/week-in-review-archive/2022-10-14/>.

<sup>190</sup> “There were 16 citizen-led amendments on the ballot since 2000, only five of which passed.” Jim Gaines, *Ohio constitution changes: A 67,000-word document just keeps growing*, DAYTON DAILY NEWS (Dec. 4, 2022), <https://www.daytondailynews.com/local/ohio-constitution-changes-a-67000-word-document-just-keeps-growing/KIC3G3HFNJGMTCLDAXVTDS4LEY/>. In contrast to the inability of voter-initiated amendments to be passed, “[t]he Ohio General Assembly has proposed 17 amendments since 2000, of which 15 passed.” *Id.* As of the writing of this Note, there had been no voter created issues on the ballot after 2018. *Id.*

<sup>191</sup> *See* OHIO CONST. art. II, § 1b.

<sup>192</sup> *Id.*; *see also Ohio Secretary of State Week in Review*, *supra* note 189. The requirement of 24,000 registered voters was calculated by taking 3% of the 800,000 estimate of eligible voters.

<sup>193</sup> There are approximately 11.75 million people in Ohio as of July 2021. Of those, approximately 78%, or 9 million people, are older than 18 years old. *Quickfacts Ohio*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/OH/AGE775221> (last visited

If every child custody case in Ohio involved both parties that are also registered voters, and if all parties were willing to sign the petition, there would only be 230,000 signatures.<sup>194</sup> It is unlikely that every single person involved in a custody matter would be interested in signing such a petition,<sup>195</sup> even if it were possible to find all those people.<sup>196</sup> Such a small percentage of affected Ohioans is unlikely to sway voters, and, thus, is unlikely to end in a petition for a law change receiving enough signatures to begin the process of the law change.<sup>197</sup>

### C. What has the Legislature Tried To Do?

The Legislature has previously attempted to create a more sweeping fix than the piecemeal approach noted in the Ohio Supreme Court study.<sup>198</sup> Prior to March 22, 2019, while domestic relations courts had jurisdiction over divorces, they did not have authority to determine custody if parents divorced.<sup>199</sup> Domestic relations courts also did not have jurisdiction to hear challenges to custody after the divorce was final.<sup>200</sup>

The Ohio Legislature sought to modify the dual court jurisdiction over divorces with children.<sup>201</sup> On March 22, 2019, House Bill 595 took effect and removed the jurisdiction of Ohio juvenile courts to determine custody and/or support: for married parents, for parents who are not married but have an existing custody or support order over the child or a sibling and the juvenile court does not have jurisdiction, or the determination is related to a pending divorce or other type of ending of a marriage.<sup>202</sup>

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Aug. 11, 2023). There were approximately 47,000 child custody and related cases in the domestic relations court in 2021. State of Ohio Cts. of Common Pleas, *supra* note 36. Also, approximately 68,000 child custody and related cases were in the juvenile court in 2021. State of Ohio Cts. of Common Pleas, *supra* note 40. This results in an approximate percentage of 2.55% (assuming that all cases involve Ohio adults on both sides of the case) of Ohioans that this directly affects and can possibly vote.

<sup>194</sup> See sources cited *supra* note 193 for a detailed breakdown of the number of child custody cases in 2021.

<sup>195</sup> This Author assumes that parties that are content with their judge and/or their custody outcome would be unwilling to sign such a petition, especially if a jurisdiction change would remove their case from a judge that they are comfortable with.

<sup>196</sup> Many cases from juvenile court are labeled using the initials of the juvenile instead of names, which makes it difficult, by design, to even identify litigants. See OHIO JUV. R. 5(a), (b).

<sup>197</sup> If the voters were to pass a law under OHIO CONST. art. II, § 1b, the legislature would then need to clean up the mess left by conflicting laws.

<sup>198</sup> Helemba et al., *supra* note 170, at 6.

<sup>199</sup> OHIO LEGIS. SERV. COMM'N, *supra* note 41, at 33.

<sup>200</sup> See generally *id.*

<sup>201</sup> *Id.* at 33.

<sup>202</sup> *Jurisdictional Changes to Ohio Juvenile and Domestic Relations Courts*, CUYAHOGA CNTY. DOMESTIC REL. CT. (May 17, 2019), <https://domestic.cuyahogacounty.us/en-US/SYN/91553/NewsDetailTemplate.aspx>.

House Bill 595 also created the ability for a juvenile court to transfer certain cases to domestic relations courts—usually where a child’s parents had a custody case in the juvenile court, then married and are now divorcing or where there is a civil protection order relating to the child.<sup>203</sup> Since the adoption of House Bill 595, the Legislature has not moved to amend jurisdiction further.<sup>204</sup> The modification of the jurisdiction of the courts demonstrates that a legislative solution to merge the courts is not only possible but within the realm of already contemplated action.

Ohio’s Legislature has tackled the edges of custody-related problems—at least initially. On December 8, 2021, Rep. Thomas West and Rep. Rodney Creech introduced Ohio House Bill 508.<sup>205</sup> This bill, in short, would have changed the standard of all visitation statewide to one that, “[t]o the greatest degree possible, that parents share equally in parenting time and rights and responsibilities of rearing their children after parents have legally separated, divorced, or dissolved or annulled their marriage or in situations where the mother is unmarried.”<sup>206</sup> House Bill 508, if enacted, would have been an entire overhaul of the child custody system in Ohio.<sup>207</sup> In addition, House Bill 508 states that findings of fact must comport with Ohio Civil Rule 53,<sup>208</sup> which is consistent with the change advocated in this Note.<sup>209</sup>

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<sup>203</sup> OHIO LEGIS. SERV. COMM’N, *supra* note 41, at 34–35.

<sup>204</sup> OHIO REV. CODE ANN. § 2151.233(A) (West 2019).

<sup>205</sup> House Bill 508 was referred to the Civil Justice Committee on February 15, 2022. *See* OHIO LEGISLATURE GEN. ASSEMBLY 134, <https://www.legislature.ohio.gov/legislation/legislation-status?id=GA134-HB-508> (last visited Sept. 3, 2023). There were six hearings held on the bill, but it did not pass prior to the ending of the legislative session. *See* OHIO LEGISLATURE GEN. ASSEMBLY 134, <https://www.legislature.ohio.gov/legislation/legislation-committee-documents?id=GA134-HB-508> (last visited Sept. 3, 2023). To become law, it would have to be reintroduced and restart the process.

<sup>206</sup> *See* OHIO LEGIS. SERV. COMM’N, H.B. 508 BILL ANALYSIS, H. 134, Reg. Sess., at 1 (2022).

<sup>207</sup> *Id.* As of the writing of this Note, H.B. 508 has been referred to committee but has stalled since February 15, 2022. It is unclear if the Bill will proceed further as this status has not changed as of September 18, 2023.

<sup>208</sup> *Id.* at 21.

<sup>209</sup> As previously noted, it is unclear how the juvenile courts apply the Ohio Rules of Civil Procedure. This is because the Ohio Rules of Juvenile Procedure eliminate the ability of a party to utilize the Ohio Rules of Juvenile Procedure for divorce, annulment, legal separation, related proceedings, and when determining parent-child relationships, except for appointment of counsel. OHIO JUV. R. 1(C). It appears that in all other custody related cases, the Ohio Rules of Juvenile Procedure dispense with the Ohio Rules of Civil Procedure. *See also* JUDGE TIMOTHY GRENDALL, INFORMATION SHEET BASICS OF THE LAW OF OHIO 2 (2018). The bill may indirectly indicate that child custody should be handled by domestic relations courts because it requires courts to follow Ohio Rule of Civil Procedure 53. Custody and related matters are not part of the exception in the Ohio Rule of Juvenile Procedure 1. By requiring findings of fact to follow OHIO CIV. R. 53, the legislature is in effect saying that the Ohio Rules of Juvenile Procedure should not be followed for custody and related matters. Regardless, if House Bill 508 is adopted, this Note strongly suggests that the Ohio Legislature eliminate the current division of

Should House Bill 508 be reintroduced, passed by the legislature, and signed into law, it would be a fundamental shift in Ohio's child custody standards. No longer would there be a statutory scheme wherein a father is considered equal to a mother if they were married,<sup>210</sup> but on unequal footing until the initial custody determination has been made if unmarried.<sup>211</sup> One of the main issues raised by this Note—disparate visitation orders—would presumptively be resolved should House Bill 508 become law.

But, not all the issues would be resolved. The presumption is one that “[t]o the greatest degree possible, that parents share equally in parenting time and rights and responsibilities of rearing their children after parents have legally separated, divorced, or dissolved or annulled their marriage or in situations where the mother is unmarried.”<sup>212</sup> So, having separate courts make these determinations could lead to continued disparities because a presumption is not an absolute.<sup>213</sup>

Other unforeseen consequences may occur from the adoption of House Bill 508. Specifically, unmarried mothers may be in situations where the father of the child may not be a great choice, due to drug, criminal, or other issues, to have equal time, but it may be difficult to prove.<sup>214</sup> On the other hand, the father may in fact be the proper parent, but the burden of overcoming the presumption may be too high to overcome, thus harming the best interest of the child and preventing justice for the child.<sup>215</sup> Although a presumption would be an improvement, merging jurisdiction over child custody to limit the disparities that inherently remain would be a superior solution.

Unfortunately, while House Bill 508 is a good start, it is not a complete solution. The bill does not address the lack of judicial qualifications and training and does not address the inconsistency created by having judges with different focuses (between worrying about the family unit versus worrying about the juvenile only) determine custody matters. As previously noted, just because the bill grants a presumption of equal parenting, that does not mean that courts are *required* to do anything. By permitting the same split jurisdiction to be maintained, House Bill 508 does not fully fix the issues it sets out to.

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jurisdiction between juvenile and domestic relations courts. In fact, even if House Bill 508 is adopted, the Ohio Legislature should eliminate any ambiguity from House Bill 508.

<sup>210</sup> See OHIO REV. CODE ANN. § 3109.03 (West 1991).

<sup>211</sup> See OHIO REV. CODE ANN. § 3109.042 (West 2015).

<sup>212</sup> See OHIO LEGIS. SERV. COMM’N, *supra* note 206, at 1.

<sup>213</sup> Presumption is one of the “slipperiest member[s] of the family of legal terms” and “[j]oint custody presumptions are especially dangerous because they run afoul to the fundamental purpose of judicial custody determinations—to craft a custody arrangement that is in the child’s best interest.” Angela Marie Caulley, *Equal isn’t always equitable: Reforming the use of Joint Custody Presumptions in Judicial Child Custody Determinations*, 27 BOSTON UNIV. PUB. INT. L.J. 403, 436 (2018) (citing KENNETH BROWN ET AL., MCCORMICK ON EVIDENCE 726 (West 7th ed. 2014) (“Joint custody presumptions are especially dangerous.”)).

<sup>214</sup> *Id.* at 437.

<sup>215</sup> *Id.*

Still, House Bill 508 demonstrates a major step in acknowledging the inconsistency between Ohio's domestic relations and juvenile courts. Adopting House Bill 508 would have many implications as it changes the guidance for child custody determinations. At a minimum, House Bill 508 indicates that Ohio recognizes the need for an overhaul of the system that acknowledges that parental relationships to children have evolved over the past century.

In addition to legislative fixes, some counties have taken matters into their own hands. Recall that Richland County had a family / juvenile court.<sup>216</sup> In addition to Richland County, Lorain County has become a model of how to combine juvenile and domestic relations jurisdictions.<sup>217</sup> Also, Champaign County has a unified family court.<sup>218</sup> Unfortunately, only a few counties have followed the lead of Richland and Lorain counties by creating a family-centered court, and it appears that waiting for the remaining counties to see the light may never happen.<sup>219</sup>

#### *D. The Only Solution is to Legislatively Merge the Courts*

Because the Ohio Supreme Court has no power to dictate that jurisdiction over child custody be moved from a split jurisdiction to one, and convincing voters to do the right thing by either passing a constitutional amendment or their own law is profoundly difficult, it falls to the legislature to create such a change. The Ohio Constitution allows for the creation of common pleas courts with separate divisions for the needs of those courts.<sup>220</sup> There is nothing in the Ohio Constitution that would prevent the legislature from directing jurisdiction over domestic relations matters.<sup>221</sup>

Therefore, changing the law governing jurisdiction of the child custody courts is the best way to resolve this issue for Ohio's children and families. The issue caused by the ill effects of split jurisdiction is the split jurisdiction itself, not necessarily the laws governing these matters.<sup>222</sup> Given that the law governing child custody awards is the same for both jurisdictions, the law does not need to be modified.<sup>223</sup> This law requires the same factors to be utilized for child custody determinations—no matter whether the parents had been married or not.<sup>224</sup> Interestingly enough, this law falls

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<sup>216</sup> Hurst IV, *supra* note 157, at 11.

<sup>217</sup> *Id.* at 4–7. Lorain County has also combined probate court into their unified family court.

<sup>218</sup> *See Champaign Cty. Family Ct.*, *supra* note 94.

<sup>219</sup> *See generally Courts by County*, *supra* note 43.

<sup>220</sup> *See* OHIO CONST. art. IV, § 4(A) (“There shall be a court of common pleas and such divisions thereof as may be established by law serving each county of the state.”).

<sup>221</sup> *See* sources cited *supra* note 6 for a discussion of child custody and related matters. *See also* OHIO LEGIS. SERV. COMM’N, *supra* note 41.

<sup>222</sup> *See supra* Section I.C.

<sup>223</sup> OHIO REV. CODE ANN. § 3109.04 (West 2011).

<sup>224</sup> *Id.*

under Title 31, *Domestic Relations*, which further lends support to the concept that child custody should be heard in the domestic relations court.<sup>225</sup>

Substantive child visitation laws<sup>226</sup> will be unaffected by moving jurisdiction into a single court, and judges will still be required to consider the same factors in making their visitation decisions. But a singular court with jurisdiction over custody will use a single judge-made visitation schedule. This will eliminate situations where children are subject to different judge-made schedules, even if they live in the same county across the street from each other, like Jackson and Sophia.<sup>227</sup>

This legislative fix will require some changes to other statutes as well. By combining the two jurisdictions into one, it creates a situation where the juvenile court would no longer need a law granting jurisdiction over certain types of private custody.<sup>228</sup> In addition, the law allowing the domestic relations court to certify jurisdiction to the juvenile court would need to be repealed.<sup>229</sup> These fixes should not be difficult to address during the drafting process.

Once the laws granting jurisdiction to the split courts are properly addressed, the legislature can create a singular law granting jurisdiction for custody and related matters to the domestic relations court, either by modifying the domestic relations jurisdiction law<sup>230</sup> or by repealing that one and creating a new one.

## V. CONCLUSION

In sum, Ohio's children face a fundamental unfairness due to the fractured jurisdiction of child custody and related matters. Ohio's fractured jurisdictional concept has created a situation where the domestic relations court does not have the jurisdiction to handle custody matters for all types of families. This does not serve the "best interest of the child."<sup>231</sup>

By combining domestic relations and juvenile courts in Ohio, the inconsistent results stemming from the current jurisdictional split will be markedly improved, if not eliminated. No longer will Ohio's children who live within the same county be subject to decidedly different, unfair, and inconsistent custody results. Additionally, parents will not be subjected to dissimilar court proceedings within their own counties based upon their marital status (or lack thereof) to each other. The disparity between the two courts is entirely unfair to Ohio's citizens, especially to Ohio's children.

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<sup>225</sup> *Id.*

<sup>226</sup> OHIO REV. CODE ANN. § 3109.051 (West 2014).

<sup>227</sup> *See supra* Sections II.B, II.C. *See also supra* note 53.

<sup>228</sup> As previously noted *supra* note 154, under the proposed schema, the juvenile court maintains jurisdiction over custody cases involving either the state or local department of children's services. This proposal only implicates private custody matters, not those involving the State of Ohio removing parental rights.

<sup>229</sup> OHIO REV. CODE ANN. § 2151.235 (West 2019).

<sup>230</sup> OHIO REV. CODE ANN. § 2151.233(A) (West 2019).

<sup>231</sup> *Id.*

Consolidating custody into a single court will help to make a fairer playing field across the state.

It is time for Ohio to continue to recognize that family relationships have changed and put custody under one umbrella, a family court under the domestic relations court banner. Otherwise, the harmful chasm of visitation faced by Sophia, Jackson, and the rest of Ohio's children will remain nearly insurmountable.