

The Chuck Evans
**STATUTORY MODEL FOR LEGAL CUSTODY
& EQUIVALENT PHYSICAL CUSTODY OF MINOR CHILDREN¹**

Revised Statute:

(A) IN ANY DIVORCE, LEGAL SEPARATION, OR ANNULMENT PROCEEDING AND IN ANY LEGAL PROCEEDING PERTAINING TO THE LEGAL AND PHYSICAL CUSTODY OF MINOR CHILDREN, EACH PARENT SHALL RETAIN THEIR LEGAL RIGHT TO CUSTODY OF THEIR MINOR CHILDREN WHERE THERE IS NO FINDING OF PARENTAL UNSUITABILITY PURSUANT TO A PARENT BEING DETERMINED TO BE UNFIT, UNWILLING, OR UNABLE TO CARE FOR THE WELFARE OF THEIR MINOR CHILDREN, BY THE EVIDENTIARY STANDARD OF CLEAR AND CONVINCING EVIDENCE, PURSUANT TO A TRIAL BY JUDGE OR JURY.

Note A: This section fixes legal right (decision-making right) to custody, a rebuttable presumption incorporating the scrutinized/required evidentiary standard, and definitions.

(B) WHERE BOTH PARENTS ARE SUITABLE AND WHERE NEITHER PARENT IS DETERMINED TO BE UNSUITABLE BY THE EVIDENTIARY STANDARD OF CLEAR AND CONVINCING EVIDENCE PURSUANT TO A TRIAL BY JUDGE OR JURY, EACH PARENT SHALL RETAIN AN EQUIVALENT PHYSICAL CUSTODY COMPANIONSHIP TIME ALLOCATION WITH THEIR MINOR CHILDREN.

(1) WHERE BOTH PARENTS ARE IN AGREEMENT TO SHARE EQUIVALENTLY IN THE PHYSICAL CUSTODY COMPANIONSHIP TIME OF THEIR MINOR CHILDREN, SUCH AGREEMENT SHALL BE REDUCED TO WRITING AND SHALL BE ACCEPTED BY THE COURT.

(2) WHERE ONE OR BOTH PARENTS DISAGREE TO EQUALLY SHARE IN THE PHYSICAL COMPANIONSHIP TIME OF THEIR MINOR CHILDREN, THE COURT SHALL ORDER AN EQUIVALENT ALTERNATING PHYSICAL COMPANIONSHIP TIME SCHEDULE.

Note B1: Section (B) fixes equal protection of physical custody (companionship time right) where both parents are similarly situated, i.e., both parents maintain legal custody since both parents are fit, therefore similarly situated.

Note B2: Paragraph (B)(2) is where state legislation/local rule or mediator/judge crafts a specific schedule, i.e., however, equivalent physical companionship time for each parent-child relationship is TAILORED to fit BOTH parent schedules unless there is an agreed deviation of an equivalent arrangement. Importantly, the deviation occurs at the parent's choice, not at the court order. In paragraph (B)(2), state legislation could include language that forces parent(s) who disagree to equally share, into mediation to craft a schedule, the result of the schedule being equivalent time or an agreed deviation.

(C) A PARENT WHO MAKES A FALSE ALLEGATION OF PARENTAL UNSUITABILITY AGAINST THE OTHER PARENT SHALL IMPLICATE THEIR LEGAL RIGHT TO CUSTODY OF HIS OR HER MINOR CHILDREN. THE PARENT ACCUSED OF MAKING A FALSE ALLEGATION OF PARENTAL UNSUITABILITY SHALL BE NOTIFIED IN WRITING OF THE

¹ The use of the author's name in the title, Chuck Evans, is attached to wholly distinguish and differentiate Chuck's model legislation, authored pursuant to the development of his legal theory "Custody & the Constitution"™. Chuck Evans' blueprint model and theory constitute the legal basis of the pending federal parental rights matter implicating the constitutionality of Ohio's statutory scheme, R.Civ. P 75(N) in *pari materia* with Ohio R.C. 3109.04, in the United States Sixth Circuit Court of Appeals captioned, *Michael A. Galluzzo v. Champaign County Court of Common Pleas*. The complete and extensive *Galluzzo* case filings in the Federal District Court in Dayton, Ohio and the United States Sixth Circuit Court of Appeals in Cincinnati, Ohio are available for review at www.pacegroup.org.

SPECIFIC CHARGE, AND PURSUANT TO A TRIAL BY JUDGE OR JURY, THE COURT SHALL MAKE A FINDING OF WHETHER A FALSE ALLEGATION OF PARENTAL UNSUITABILITY WAS DETERMINED BY THE EVIDENTIARY STANDARD OF CLEAR AND CONVINCING EVIDENCE. WHERE THE SPECIFIC FINDING OF A FALSE ACCUSATION IS DETERMINED TO HAVE BEEN MADE BY THE OFFENDING PARENT, THE COURT SHALL ORDER LEGAL CUSTODY OF THE PARTIES MINOR CHILDREN TO THE NON-OFFENDING PARENT. THE COURT SHALL PROVIDE THE OFFENDING PARENT THE OPPORTUNITY TO PARTICIPATE IN MEDIATION TO REDUCE INTO WRITING AN AGREEMENT TO A COMPANIONSHIP TIME SCHEDULE WITH THE PARTIES MINOR CHILDREN.

Note C: In Section (C) state legislation can include language that determines whether the companionship time is to be supervised, unsupervised, local rule, etc., and can fix the length of time of the penalty (remember, this is a civil finding not a criminal finding). Also, there can be a purge of the legal custody deprivation. For example, after one year of “probation” and no further problems of false accusations, interference, etc., the offending parent's legal right to custody is restored and the companionship time shall be restored by crafting an incremental increase in time, an equivalent time schedule, or an agreed deviation time schedule. For more serious or repeat civil offenses, then this section can also reflect the penalty for further abuse. This section will deter egregious allegations where the civil penalty is significant.

(D) A PARENT WHO CHOOSES TO RELOCATE OUTSIDE OF THE SCHOOL DISTRICT WHERE THE MINOR CHILDREN AT ISSUE, WHETHER OF SCHOOL AGE OR YOUNGER, WERE RAISED BY THE PARTIES OR WOULD HAVE BEEN RAISED BY THE PARTIES, SHALL WAIVE THEIR LEGAL RIGHT TO CUSTODY OF THEIR MINOR CHILDREN WHERE THE RELOCATING PARENT CANNOT MAINTAIN THE MINOR CHILDREN'S SCHEDULE WITHOUT INTERRUPTION.

(1) WHERE BOTH PARENTS ARE IN AGREEMENT TO ACCOMMODATE THE MINOR CHILDREN'S SCHOOL SCHEDULE OR AGREE TO THE ESTABLISHMENT OF A NEW SCHOOL DISTRICT, SUCH AGREEMENT SHALL BE REDUCED TO WRITING AND SHALL BE ACCEPTED BY THE COURT.

(2) WHERE ONE OR BOTH PARENTS ARE UNABLE TO ACCOMMODATE THE MINOR CHILDREN'S SCHOOL SCHEDULE, THE COURT SHALL ORDER BOTH PARENTS INTO MEDIATION TO REDUCE INTO WRITING A COMPANIONSHIP TIME SCHEDULE THAT MAXIMIZES BOTH PARENTS ABILITY TO PARTICIPATE IN A PARENT-CHILD RELATIONSHIP THAT ACCOMMODATES THE CHILDREN'S SCHOOL SCHEDULE.

(3) WHERE THE RELOCATING PARENT CHOOSES TO RELOCATE TO THE SCHOOL DISTRICT ESTABLISHED BY DECREE OR SUBSEQUENT MODIFICATION, THE COURT SHALL ORDER AN EQUIVALENT ALTERNATING PHYSICAL COMPANIONSHIP TIME SCHEDULE.

Note D: In Section (D), due to conflicts with the right to interstate travel, the relocating parent is explicitly waiving their liberty right to legal custody pursuant to the final decree which establishes *from the outset* that *each parent's rights are equally protected*, therefore the relocating parent is no longer similarly situated to the nonrelocating parent. Voluntary waiver is established by a civil finding that the relocating parent is unwilling or unable to accommodate the school district placement affixed in the decree. This is a *voluntary* decision to relocate...had the relocating parent decided (for whatever reason) not to move-away, their legal custody and equal physical custody rights would remain undisturbed. Regardless, this section recognizes the fundamental nature for parental participation in their children's lives and provides the least intrusive means to reach a resolution that maximizes the participation of each autonomous parent-child relationship.

Additional Notes:

(A) Parents determined to be unsuitable by an involuntary finding by the state domestic court would be subject to more restricted companionship time, if any, supervised or unsupervised, solely at the discretion of the court. This issue is outside the scope of equal parental rights for SUITABLE/FIT parents.

(B) For serious criminal offenses, abduction, escalated false allegations, the criminal statutes provide all the language necessary to deal with extreme issues.