



Domestic Relations Bench Cards



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THE SUPREME COURT *of* OHIO

DOMESTIC RELATIONS BENCH CARDS



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ALLOCATION OF PARENTAL RIGHTS & RESPONSIBILITIES

ALLOCATION OF PARENTAL RIGHTS & RESPONSIBILITIES

JURISDICTION

1. Upon granting a divorce, dissolution, annulment, or legal separation, the court has jurisdiction to make an order for the care and maintenance of minor children.
 - Failure to allocate parental rights and responsibilities may result in a judgment being viewed as interlocutory as to the termination of the marriage and may not be a final appealable order.
 - When allocating parental rights and responsibilities, the court must make an express order granting or denying parenting time.
2. Parenting Proceeding Affidavit [R.C. 3127.23(A)]
 - Each party to a parenting proceeding in the first pleading or by affidavit must provide the following information:
 - The child's present address and places where the child lived within the last five years;
 - The name and present address of each person with whom the child lived during that five-year period;
 - Information concerning other parenting proceedings, whether previously adjudicated or currently pending, concerning the same child;
 - The name of any person not a party to the proceeding who has physical custody of the child, who claims to be the residential parent or custodian, or who claims to have visitation rights; AND
 - Whether the party has pleaded guilty to or been convicted of a criminal offense involving an act that resulted in a child being abused or neglected; or if a child has been adjudicated abused or neglected, the party was the perpetrator of the act that was the basis or the adjudication.

- The filing of the parenting proceeding affidavit is a mandatory jurisdictional requirement of a parenting proceeding.
 - The requirement is satisfied as long as the affidavit is filed by the hearing.



Each domestic relations court may have a specific version of the affidavit required to be filed in that court.



Pursuant to **R.C. 3127.23(D)**, if a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by the disclosure of identifying information, then the information shall be sealed and may not be disclosed to the other party or the public, unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, and liberty of the party or child and determines that the disclosure is in the interests of justice.



Special rules may apply if the child is of Native-American descent or a parent is an active member of the military.

See Indian Child Welfare Act (ICWA) 25 U.S.C. § 1902, nicwa.org/Indian_Child_Welfare_Act/ICWA.pdf.

ALLOCATING PARENTAL RIGHTS AND RESPONSIBILITIES [R.C. 3109.04]



Cases involving non-relative custody must be certified to juvenile court. [R.C. 3109.04(D)(2)]

1. Designate one parent as the residential parent and legal custodian of minor children.
 - Award parenting time to the non-residential parent
 - Order child support to be paid, cash medical support, and award the tax-dependency exemption

2. Adopt a Shared Parenting Plan and order shared parenting where both parents share all or some aspects of physical and legal custody of minor children

- One or both parents must request shared parenting
- One or both parents must file a Shared Parenting Plan



The court cannot award shared parenting if no Shared Parenting Plan is filed. Nor can it create its own shared parenting plan.

BEST INTEREST OF THE CHILDREN – STANDARD USED TO DETERMINE THE ALLOCATION OF PARENTAL RIGHTS

1. **Best Interest Factors** [R.C. 3109.04(F)(1)]

- The parents' wishes regarding the child's care;
- The wishes and concerns of the child, if interviewed;
- The child's interaction and relationship with the family members and anyone else significantly affecting the child's life;
- The child's adjustment to home, school, and community;
- The mental and physical health of all parties involved;
- The likelihood that a parent will honor and facilitate parenting time;
- Whether child-support arrearages exist;
- Whether a household member was convicted or pled guilty to a criminal act involving neglect or abuse of a child or family member;
- Whether the residential parent had willfully denied parenting time to the other parent;
- Whether a parent plans to establish a residence outside the state.

2. Additional factors to consider with shared parenting [R.C. 3109.04(F)(2)]:

- The ability of the parents to cooperate and make decisions jointly, with respect to the children;
- The ability of each parent to encourage the sharing of love, affection, and contact between the child and the other parent;
- Any history of, or potential for, child abuse, spouse abuse, other domestic violence, or parental kidnapping by either parent;
- The geographic proximity of the parents to each other, as the proximity relates to the practical considerations of shared parenting;
- The recommendation of the guardian ad litem (GAL), if the child has a guardian ad litem.

3. Additionally, the factors found in R.C. 3119.23 must be considered in determining whether shared parenting is in the best interest of the children.

4. When determining the allocation of parental rights and responsibilities or shared parenting, the court must consider the following facts against the allocation of parental rights or shared parenting [R.C. 3109.04(C)]:

- A parent previously found neglectful is a factor that weighs against that parent being designated the residential parent and legal custodian or being awarded shared parenting, but it is not determinative;
- If a parent previously was convicted of domestic violence or a sex offense against any family or household member, he/she is precluded from being designated the residential parent and legal custodian or being awarded shared parenting, unless there is an express finding that it is in the best interest of the child for that parent be designated the residential parent or be awarded shared parenting.

INTERVIEW CHILD AS TO WISHES AND CONCERNS [R.C. 3109.04(B)]

1. The interview is in the discretion of the court.
 - If a parent requests an interview, then the court must interview the child.
2. The appointment of a guardian ad litem for the child is within the discretion of the court.
 - If a parent requests a guardian ad litem, then the court must appoint a guardian ad litem for the child.
3. Child interview
 - The court must determine the reasoning ability of the child [R.C. 3104(B)(2)(b)]
 - If the court determines that the child does not have sufficient reasoning ability to express the child's wishes and concerns, then the court shall not determine the child's wishes and concerns.
 - If the court determines that the child has sufficient reasoning ability to express the child's wishes and concerns:
 - Determine whether, because of special circumstances, it would not be in the best interest of the child to determine the child's wishes and concerns with respect to allocation.
 - If the court determines that it is not in the best interest of the child to determine the child's wishes and concerns, then the court needs to include written findings of fact and opinion in the order.
 - If it is in the best interest of the child to determine the child's wishes and concerns with respect to allocation, the court shall proceed to make the determination.
 - The interview shall be conducted in chambers [R.C. 3109.04(B)(2)(c)]
 - Participants in the interview should be the judge/magistrate, child, child's

attorney, and any necessary court personnel.

- The judge/magistrate has discretion to permit the attorney for each parent to be present during the interview.



The court may permit the child's GAL to be present during the interview.



The court shall not accept or consider a written or recorded statement or affidavit that purports to set forth the child's wishes and concerns regarding an allocation of parental rights. [R.C. 3109.04(B)(3)].

SHARED PARENTING [R.C. 3109.04(D)(1)]

1. Either or both parents may request shared parenting when filing a pleading or motion.
 - The parent(s) requesting shared parenting must file with the court a plan for the exercise of shared parenting.
 - The Shared Parenting Plan must be filed at least 30 days prior to the hearing on the issue of parental rights and responsibilities for the care of children.



The court may waive the 30-day filing requirement.

2. A Shared Parenting Plan
 - Shall include provisions covering all factors that are relevant to the care of children, including, but not limited to:
 - Physical living arrangements for children;
 - Child support obligations, cash medical support, and tax dependants;
 - Medical and dental care, and payment;
 - School placement;
 - Parenting time;

- Parenting time for holidays, school breaks, and days of special meaning;
 - When possible, the Shared Parenting Plan shall ensure both parents have frequent and continuing contact with the children.
3. Responsibility of court related to Shared Parenting Plans:
- Parents make joint request or file a joint Shared Parenting Plan
 - Review plan to determine if it is in the best interest of the children.
 - Approve the plan if it is in the best interest of the children.
 - If review of the plan determines that all or part of plan is not in children's best interest:
 - Require the parents to make appropriate changes to the plan to meet the court's objections.
 - If changes are made to meet the court's objections, then approve the plan.
 - If changes do not meet the court's objections or the new plan or changes still are not in the best interest of the children, then the court may reject that portion of the pleading or deny the motion for shared parenting and proceed as if the request for shared parenting in the pleading was not made.
 - Each parent requests shared parenting and each parent files a Shared Parenting Plan:
 - Review each plan to determine if either plan is in the best interest of the children;
 - If one plan is in the best interest of the children, then approve the plan.
 - If neither plan is in the best interest of the children:
 - Order each parent to submit appropriate changes to one or both of the filed plans;
 - Select one plan and order each parent to make the changes to that plan;
 - If changes meet court's objections and are in the best interest of the children, then the court may approve the plan with the changes.
 - If changes are not submitted, or submitted but do not satisfy court's requirements, or the changes are not in the best interest of the children:
 - Reject the request for shared parenting;
 - Deny the motion for shared parenting; OR
 - Proceed as if the shared parenting request was not made.
 - If only one parent makes request or only one parent filed a plan, the court may order the other parent to file a plan.
 - The court shall make findings of fact and conclusions of law as to the reasons for the approval or rejection of a shared parenting plan.
 - The court cannot approve more than one Shared Parenting Plan.
 - The court cannot approve a plan unless it determines that the plan is in the best interest of the children.
 - The approved plan shall be incorporated into a final shared parenting decree granting the parents shared parenting of the children.

- The final shared parenting decree shall be issued at the same time as and shall be appended to the final decree of dissolution, divorce, annulment, or legal separation.
- Shared parenting is between parents – not between a parent and a third party.



If parties request parenting time by agreement, then the order should include a minimum schedule.

PARENTING TIME

1. The court shall make an order permitting the parents to have parenting time with the child at the times and under the conditions that the court directs.
 - When possible, the order permitting parenting time shall ensure the opportunity for both parents to have frequent and continuing contact with the children.
 - The court shall include in its final decree a specific schedule of parenting time.
2. Findings of fact and conclusions of law are necessary if the court determines that it would not be in the best interest of the child to have parenting time with a parent.
3. The Ohio Revised Code requires each court to adopt standard parenting-time guidelines.
 - A court has discretion to deviate from its standard parenting-time guidelines based on the factors set forth below. [R.C. 3109.051(F)(2)]

COMPANIONSHIP TIME [R.C. 3109.051(B)]

1. The court may grant reasonable companionship or visitation rights to any grandparent, any person related to the child by consanguinity or affinity, or any other person other than a parent if all the following apply:
 - The person seeking companionship time files a motion with the court;
 - The court determines that the person has an interest in the welfare of the child; AND

- The court determines that the granting of the companionship or visitation rights is in the best interest of the child.
2. The motion seeking companionship may be filed during the pendency of the pre-decree proceedings or if the circumstances change at any time after a decree or final order is issued in the case.

FACTORS TO BE CONSIDERED WHEN GRANTING PARENTING TIME OR COMPANIONSHIP TIME [R.C. 3109.051(D)]

The prior interaction and inter-relationships of the child with the parents, siblings, and other person related by consanguinity or affinity, and with the person who requested companionship or visitation if that person is not a parent, sibling, or relative of the child;

- The geographic location of the residence of each parent and the distance between those residences, and if the person is not a parent, the geographical location of that person's residence and the distance between that person's residence and the child's residence;
- The child's and parents' available time, including, but not limited to each parent's employment schedule, the child's school schedule, and the child's and parents' holiday and vacation schedule;
- The age of the child;
- The child's adjustment to home, school, and community;
- If the court interviewed the child regarding the child's wishes and concerns as to parenting time or companionship or visitation, or as to other parenting time or visitation matters, the wishes and concerns of the child as expressed to the court;
- The health and safety of the child;
- The amount of time available for the child to spend with siblings;
- The mental and physical health of all parties;

- Each parent's willingness to reschedule missed parenting time and to facilitate the other parent's parenting-time rights, and with respect to a person who requested companionship, the willingness of that person to reschedule missed time;
- Prior abuse or neglect of a child, prior domestic violence or sexually oriented offenses by any party seeking parenting time or companionship time. [See R.C. 3109.051(B)(11)-(12)];
- Whether the residential parent or one of the parents subject to a shared parenting decree has continuously and willfully denied the other parent's right to parenting time in accordance with a court order;
- Whether either parent has established a residence or is planning to establish a residence outside this state;
- In relation to requested companionship, the wishes and concerns of the child's parents; AND
- Any other factors in the best interest of the child.



The court may order supervised parenting time through a third party or an agency as appropriate.

NOTICE OF INTENT TO RELOCATE

[R.C. 3109.051(G)(1)]

1. If the residential parent intends to move from the residence set forth in the parenting time order, the parent shall file a notice of intent to relocate with the court that issued the order.
 - The court shall send a copy of the notice to the non-residential parent, unless:
 - At the time the parenting time order was entered, the court determined that it was not in the best interest of the child for the non-residential parent to receive a copy of a Notice of Intent to Relocate;

- Upon receipt of a Notice of Intent to Relocate, the court on its own motion or the motion of either parent, may schedule a hearing with notice to both parents to determine whether it is in the best interest of the child to revise the parenting time schedule;
 - The residential parent may file a motion with the court requesting that the non-residential parent not receive a copy of any Notice of Intent to Relocate; [See R.C. 3109.051(G)(4)]
 - Upon the filing of the motion, the court shall schedule a hearing and give both parents notice of the date, time, and location of the hearing. [R.C. 3109.051(G)(4)]
2. Both parents to a shared parenting decree should file a Notice of Intent to Relocate if they move to a residence other than the residence set forth in the shared parenting decree.

ACCESS TO RECORDS [R.C. 3109.051(H)]

1. The non-residential parent shall be entitled to access to records related to the child under the same terms and conditions as the residential parent is entitled access to those records.
 - Findings of fact and conclusions of law are required in the parenting order if the court determines that it is not in the best interest of the child for the non-residential parent to have the same access to records as the residential parent;
 - The parenting order shall contain the terms and conditions of access to records for both the residential parent and the non-residential parent.
2. The order shall include a notice that any keeper of a record who knowingly fails to comply with the order is in contempt of court.

3. Records include, but are not limited to:

- Day-care records;
- School records;
- School activity records;
- Medical records.

4. Child Passports

- Both parents are required to sign a passport application absent an exception. [*For more information, see U.S. State Department at travel.state.gov.*]

PARENTING CLASSES [R.C. 3109.053]

1. Parents may be required to attend parenting classes or obtain counseling before the court issues an order allocating parenting rights and responsibilities.

CERTIFICATION TO JUVENILE COURT [R.C.3109.06]

1. The court, on its own motion or on the motion of any interested party, may certify the case to the juvenile court for further proceedings.
2. If the court finds the parents unsuitable to be allocated parental rights and responsibilities for the care of the child and unsuitable to provide the place of residence to be the legal custodian of the child, then the case may be certified to juvenile court.
3. Upon certification, the juvenile court has exclusive jurisdiction over the parenting issues.

MODIFICATION OF A PARENTING ORDER [R.C. 3109.04(E)]

*See also Fisher vs. Hasenjager
116 Ohio St.3d 53 (2007).*

1. The court shall not modify a prior decree allocating parental rights and responsibilities unless it finds, based on facts that arise since the prior decree or were unknown to the court at the time of the prior decree, that a change in circumstances occurred and a modification is necessary to serve the best interest of the child.

- The change in circumstances must be of:
 - The child;
 - The child's residential parent; or
 - Either parent subject to a shared parenting order.

2. The court shall retain the residential parent designated by the prior order unless the modification is in the best interest of the child and one of the following apply:

- The residential parent agrees to a change in the residential parent or both parents under a shared parenting order agree to a change in the designation of residential parent.
- The child, with the consent of the residential parent or of both parents under a shared parenting order, has been integrated into the family of the parent seeking to become the residential parent.
- The harm likely to be caused by a change of environment is outweighed by the advantages of the change of environment to the child.

3. The best interest factors applied are the same factors used in the initial determination of parental rights and responsibilities.

4. One or both parents may file a motion requesting shared parenting when the prior parenting order is not a shared parenting order.

- The motion shall include:
 - Request for a modification of the prior order;
 - Request for shared parenting;
 - Shared Parenting Plan.
- A modification to a shared parenting order must meet the modification requirements as set forth herein and the court must find that the shared parenting plan is in the best interest of the child.

5. Parents under a shared parenting order may jointly modify the terms of the Shared Parenting Plan approved by the court.

- The modifications may be made at any time;
 - The modifications shall be filed jointly by both parents;
 - The court shall include the modifications in the plan, unless they are not in the best interest of the child.
 - If the modifications are not in the best interest of the child, then the court, in its discretion, may:
 - Reject the modifications; OR
 - Modify the proposed modifications of the plan that are in the best interest of the child. The modifications shall be effective upon the inclusion by the court in the plan.
6. The court may modify the terms of a Shared Parenting Plan incorporated into the shared parenting order upon its own motion at any time if the court determines the modifications are in the best interests of the child or upon the request of one or both parents.
- Modifications may be made at any time.
 - Modifications must be in the best interest of the children.
7. The court may terminate a prior final shared parenting order upon the request of one or both of the parents or whenever the court determines that shared parenting is not in the best interest of the child.
8. Upon termination of a prior final shared parenting order, the court shall proceed and issue a modified decree for the allocation of parental rights and responsibilities for the care of the children as if no decree for shared parenting had been granted and as if no request for shared parenting had been made.



Check prior orders for dispute resolution clauses. The court also may order dispute-resolution processes on its own.

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT ("UCCJEA") [R.C. CHAPTER 3127]

See UCCJEA Bench Card.

CHILD SUPPORT

PARENTAL DUTY TO SUPPORT CHILDREN

- Parental duty of support begins at birth
- Law presumes married parents are providing support for their children
- Parental duty of support presumed:
 - Biological parent of a child;
 - Man determined to be the natural father of child under R.C. 3111.01 through R.C. 3111.19 or R.C. 3111.20 through R.C. 3111.29;
 - Adopted child [R.C. Chapter 3107];
 - Parent signed an acknowledgement of paternity that became final under R.C. 3111.82, R.C. 3111.64, and R.C. 2151.232.

In any proceeding for divorce, dissolution, legal separation, or child support, the court may order either or both parents to support their children. Child support may also be redirected to caregivers as defined in R.C. 3119.01(C)(1).

JURISDICTION



Check local rules of practice to determine if a proceeding would fall under the domestic relations or juvenile court, and determine what becomes of a juvenile court or administrative order if one is issued prior to filing of divorce. Recent changes to R.C. Chapter 2151 regarding the juvenile court jurisdiction may impact which court should receive an appeal from an administrative support order.

- The domestic relations court has jurisdiction over child support for children born prior to the marriage if there is no juvenile-court support order.
- The domestic relations court does not have jurisdiction to award child support prior to the filing date for the divorce as long as the married parents did not seek a child support order prior to filing for divorce.
- The domestic relations court has continuing jurisdiction to enforce or modify child support orders.

DURATION OF CHILD SUPPORT [R.C. 3119.86]

- The domestic relations court has jurisdiction to order child support to continue through age 18 or finished with high school, but no later than age 19.
 - Duty of support continues beyond age 18 as long as the child continuously attends, on a full-time basis, any recognized and accredited high school; OR
 - A court-issued child support order provides the duty of support to continue beyond the age of majority.
 - The child support order shall not remain in effect after the child reaches age 19, even if the child still is enrolled in high school.
- Disabled children
 - In the case of mentally or physically disabled children, the duty of support may continue beyond age 18 if the child is unable to support himself/herself:
 - The physical or mental disability existed prior to the child reaching age 18;
 - The court must make factual determination that the child is unable to support himself/herself before extending the support beyond age 18.
 - A trial court may award an ongoing obligation for a child disabled under the definition in *Castle v. Castle*, 15 Ohio St.3d 279, 473 N.E.2d 803 (1984), even if the child is over the age of 18 at the time of the divorce, because the child has not and will not reach the age of majority by being self-sufficient or self-sustaining at any foreseeable point.

IMPORTANT TERMS AND DEFINITIONS

- **Income Share** – Percentage derived from a comparison of each parent’s annual income (after allowable deductions and credits as indicated on the worksheet) to the total annual income of both parents. [R.C. 3119.01(C)(11)]
- **Self-Sufficiency Reserve** – The minimal amount necessary for an obligor to adequately subsist upon. [R.C. 3119.01(C)(21)]
- **Health Insurance Coverage** – Accessible private health insurance that provides primary care services within 30 miles from the residence of the children subject to the support order. [R.C. 3119.29(C)]
- **Family Coverage** – The health insurance plan that provides coverage for the children who are the subject of a child support order. [R.C. 3119.29(A)]
- **Reasonable Cost** – The cost of private health insurance to the person required to provide health insurance coverage for the children, subject to the child support order, that does not exceed five percent of the annual income of that person. [R.C. 3119.29(G)]
- **Cash Medical Support** – An amount ordered to be paid in a child support order toward the ordinary medical expenses incurred during a calendar year. [R.C. 3119.01(C)(2)]
- **Ordinary Medical Expenses** – Copayments and deductibles, and uninsured medical-related costs for the children of an order. [R.C. 3119.01(C)(15)]
- **Extraordinary Medical Expenses** – Any uninsured medical expenses incurred for a child during a calendar year that exceed the total cash medical-support amount owed by the parents during the year. [R.C. 3119.01(C)(8)]
- **Child Care Costs** – The annual out-of-pocket costs for the care and supervision of a child subject to a child support order that is related to work or employment training. [R.C. 3119.01(C)(3)]
- **Court-Ordered Parenting Time** – The amount of parenting time a parent is to have under a parenting time order or the amount of time the children are to be in the physical custody of a parent under a shared parenting order. [R.C. 3119.01(C)(5)]
- **Split Parental Rights and Responsibilities** – A situation in which there is more than one child who is the subject of an allocation of parental rights and responsibilities and each parent is the residential parent and legal custodian of at least one of those children. [R.C. 3119.01(C)(22)]
- **Income** – The gross income of a parent employed to full capacity or the sum of the gross income and potential income of a parent who is unemployed or underemployed. [R.C. 3119.01(C)(10)]
- **Gross Income** – The total of all earned and unearned income from all sources during a calendar year, whether taxable or not. [R.C. 3119.01(C)(13)]
 - Gross income does NOT include:
 - Benefits received from means-tested government administered programs;
 - Benefits for any service-connected disability under a program or law administered by the U.S. Department of Veterans’ Affairs or Veterans’ Administration that are not means-tested, that have not been distributed to the veteran who is the beneficiary of the benefits, and that are in the possession of the U.S. Department of Veterans’ Affairs or Veterans’ Administration;
 - Child support amounts received for children who are not included in the current child-support calculation;
 - Amounts paid for mandatory deductions from wages, such as union dues, but not taxes, social security, or retirement in lieu of social security;

- Nonrecurring or unsustainable income or cash-flow items;
- Adoption assistance and foster care maintenance payment made pursuant to **Title IV-E** of the **Social Security Act**.

CHILD SUPPORT SCHEDULES

- The child support schedules are rebuttably presumed to be the correct amount of child support. **[R.C. 3119.03]**
- The child support schedule shall be used when calculating the amount of child support, unless the combined annual income of the parents is less than \$8,400.00 per year or more than \$336,000.00 per year.
 - More than \$336,000.00 per year:
 - Child support calculated on a case-by-case basis and the court shall consider the needs and standard of living of the children and the parents. **[R.C. 3119.04]**
- The child support obligation shall be no less than the obligation that would have been computed under the child support schedule and applicable worksheet for the combined annual income at \$336,000.00, unless the court determines that it would be unjust or inappropriate and would, therefore, not be in the best interest of the children, the obligor, or obligee to order that amount.
 - If the court makes the best interest determination, then it shall include findings of fact.
 - Less than \$8,400.00:
 - If the combined annual income of both parents falls below \$8,400.00, then the court shall apply the minimum support amount, which is \$80.00 per month for all children.

CALCULATION OF CHILD SUPPORT

- The court shall calculate the amount of the parents' child support and cash-medical obligation in accordance with the basic child support schedule, the applicable worksheet, and other provisions of **R.C. Chapter 3119**.
- The court shall specify the support obligation as a monthly amount due.
- The court is not required to accept any calculations in a worksheet prepared by any party to the action or proceeding.



Parties should be encouraged to submit proposed worksheets and/or stipulate to the figures contained within the worksheet.

CHILD SUPPORT WORKSHEET OVERVIEW

1. Income

- When computing the amount of child support to be paid, all of the following apply:
 - Parents' current and past incomes shall be verified with suitable documents;
 - A parent's income does not include income earned by the parent's spouse.
 - Annual income shall include the lessor of the following as income from overtime and bonuses:
 - The yearly average of all overtime, commissions, and bonuses received during the three years immediately prior to the time when the child support obligation is being computed; OR
 - The total overtime, commissions, and bonuses received during the year immediately prior to the time when the child support is being computed.

- When appropriate, the court may average income over a reasonable period of years;
- A court may impute income to a parent when the court determines that the parent is unemployed or underemployed voluntarily.
 - Unless it would be unjust, inappropriate, and, therefore, not in the best interest of the child, a court shall not determine a parent to be unemployed or underemployed voluntarily and shall not impute income to that parent if any of the following apply:
 - The parent is receiving recurring monetary income from means-tested public assistance benefits or means-tested veterans' benefits.
 - The parent is approved for Social Security disability-insurance benefits because of a mental or physical disability, or the court determines that the parent is unable to work based on medical documentation that includes a physician's diagnosis and a physician's opinion regarding the parent's mental or physical disability and inability to work.
 - The parent proves that the parent has made continuous and diligent efforts without success to find and accept employment, including temporary employment or part-time employment at less than the parent's previous salary or wage.
 - The parent is complying with court-ordered family reunification efforts in a child abuse, neglect, or dependency proceeding, to the extent that compliance with those efforts limits the parent's ability to earn income.

- The parent is incarcerated or institutionalized for 12 months or more with no other available assets, unless the parent is incarcerated for an offense related to the abuse or neglect of a child who is the subject of the support order or an offense under **Title XXIX** of the **Revised Code** against the obligee or a child who is the subject of the support order.



Spousal support received is income to the person receiving the spousal support.



The cost of union dues and uniform fees are not income and, therefore, should be deducted from the income of the person paying the union dues or uniform fees.

2. Adjustments to Income

- The number of children each parent has that are not included as part of the child support obligation being calculated.
- The amount of verifiable court-ordered spousal support actually paid, excluding arrearages.
- The total out-of-pocket cost paid for health insurance premiums for the children for the parent or parents ordered to provide coverage.

3. Income Shares

- Considers the adjusted incomes of each parent to their combined income to determine each parent's income-share percentage of the combined obligation.
- Takes into consideration the self-sufficiency reserve.

4. Child Support Calculation

- The child support schedule shall be applied to the parents' combined annual incomes and to each parent's individual income.
 - If the annual individual income of a parent is within the self-sufficiency reserve:
 - Calculate child support for the parents using the schedule amount applicable to the combined annual income and the schedule amount applicable to the income in the self-sufficiency reserve;
 - The applicable child support obligation is the lessor of the following:
 - The amount that results from using the combined annual income of the parents not in the self-sufficiency reserve;
 - The amount that results from using the individual parent's income within the self-sufficiency reserve of the schedule.
- A 10-percent reduction in child support is built into the child support calculation when the child support obligor has court-ordered parenting time that equals or exceeds 90 overnights per year. [R.C.3119.051]
- Derivative Benefits – Any non-means-tested benefit received by a child resulting from the claims of either parent shall be deducted from that parent's annual child support obligation after all other adjustments are made.
 - If the benefit exceeds the child support obligation of the parent from whose claim the benefit is realized, then the child support obligation for that parent shall be zero.

- Child Care Expenses – Parents shall be ordered to share the cost of child care.
 - The child care cost is necessary to allow a parent to work or attend activities related to employment training;
 - The child care cost shall be determined by verifiable evidence;
 - The child care cost shall exclude any reimbursed or subsidized child care cost, including state or federal tax credit for child care available, whether claimed or not;
 - The child care cost shall not exceed the maximum statewide average-cost estimate.
 - Child care expenses are broken down in a chart on the worksheet based upon the number of children, the age of each child, the maximum allowable cost of child care, and the actual out-of-pocket cost of child care.
 - The ultimate child care figure will be the lower of the actual out-of-pocket cost or the maximum figure.

5. Cash Medical

- An amount ordered to be paid in a child support order toward the ordinary medical expenses incurred during a calendar year.
 - Cash medical is a set amount determined by the director of the Ohio Department of Job and Family Services using the U.S. Department of Health and Human Services Medical Expenditure Panel Survey.
 - The cash medical amount may vary from year to year.
 - Cash medical amount currently is \$388.70 per child.
 - Cash medical is prorated between the parents within the child support order.

6. Deviation Factors

- The amount of child support and cash-medical support calculated pursuant to the schedule and worksheet may be deviated from if the court finds that the calculated amount of child support or cash-medical support would be unjust or inappropriate and, therefore, not in the best interest of the minor children.
- If the court deviates from the calculated amount of child support, then the court order must include the child support amount calculated pursuant to the schedule and worksheet, a determination that the amount would be unjust or inappropriate and, therefore, not in the best interest of the children, and findings of fact to support that determination. [R.C. 3119.22]
- Factors to be considered in granting a child-support deviation [R.C. 3119.23]:
 - Special or unusual needs of the children, including needs arising from the physical or psychological condition of a child;
 - Extended parenting time or extraordinary costs associated with parenting time, including extraordinary travel expenses when exchanging the child for parenting time;
 - The financial resources and the earning ability of the children;
 - The relative financial resources, including the disparity in income between parties or households, other assets, and the needs of each parent;
 - The obligee's annual income, if it is equal to or less than 100 percent of the federal poverty level;
 - Benefits that either parent receives from remarriage or shared living expenses with another person;
 - The amount of federal, state, and local taxes actually paid or estimated to be paid by a parent or both parents;
 - Significant in-kind contributions from a parent, including, but not limited to, direct payment for lessons, sports equipment, schooling, or clothing;
 - Extraordinary work-related expenses incurred by either parent;
 - The standard of living and circumstances of each parent and the standard of living the child would have enjoyed had the marriage continued or had the parents been married;
 - The educational opportunities that would have been available to the child had the circumstances requiring a child support order not arisen;
 - The responsibility of each parent for the support of others, including support of a child or children with disabilities who are not subject to the support order;
 - Post-secondary educational expenses paid for by a parent for the parent's own child or children, regardless of whether the child or children are emancipated;
 - Costs incurred or reasonably anticipated to be incurred by the parents in compliance with court-ordered reunification efforts in child abuse, neglect, or dependency cases;
 - Extraordinary child care costs required for the child or children that exceed the maximum statewide average cost, including extraordinary costs associated with caring for a child or children with specialized physical, psychological, or educational needs;
 - Other court-ordered payments;
 - Any other relevant factor.

- Additional factors that may be reason to deviate from the calculated support amount.
 - If the court-ordered parenting time exceeds 90 overnights per year, then the court shall consider whether to grant a deviation pursuant to the [R.C. 3119.23](#)-factor related to extended parenting time. The parenting time adjustments apply to both shared parental rights and responsibilities and a sole allocation of parental rights and responsibilities. [\[R.C. 3119.231\]](#)
 - This deviation would be in addition to the credited 10-percent reduction in the child support obligation.
 - If court-ordered parenting time is equal to or exceeds 147 overnights per year and no deviation is granted, then the court must specify the facts that are the basis for not granting a deviation.
 - A separate order is needed for an order for payment of private education expenses or other appropriate expenses.
 - A separate order is needed for medical support for extraordinary medical expenses, including orthodontia, dental, optical, and psychological services.
- Deviation from calculated child support amount when the parties have shared parenting [\[R.C. 3119.24\]](#)
 - In addition to the deviation factors discussed when determining whether there should be a deviation in the calculated child support amount when the parties have shared parenting, the court needs to consider if the amount of child support would be unjust or inappropriate to the children or either parent and, therefore, not in the best interest of the children because of extraordinary circumstances of the parents or based upon the parenting-time credits set forth in statute.

- Extraordinary circumstances include:
 - The ability of each parent to maintain adequate housing for the children;
 - Each parent's expenses, including, but not limited, to child care expenses, school tuition, medical expenses, and dental expenses;
 - Any other expenses the court considers relevant.

HEALTH INSURANCE

1. Health Insurance Coverage

- In any proceeding where child support is ordered or modified, the court shall determine the person or persons responsible for the health care of the children subject to the support order and shall include provisions for the health care of the children in the support order.
- The order shall specify that the obligor and obligee both are liable for the health care of the children not covered by private health insurance.
- The child-support obligee is presumed to be the parent responsible for providing health insurance coverage for the children subject to the child support order. This presumption may be rebutted after a consideration of the following factors:
 - The obligor already has health insurance coverage for the children that is reasonable in cost;
 - The obligor already has health insurance coverage for the children that is not reasonable in cost, but the obligor wants to be named the health insurance obligor and provide coverage;
 - The obligor can obtain coverage for the child that is reasonable in cost through an employer or other source;
 - The obligee is a non-parent individual or agency that has no duty to provide medical support.

- If private health insurance is not available to the obligee or obligor at the time the support order is issued, then the order shall include a requirement that the obligee obtain private health insurance coverage for the children no later than 30 days after it becomes available to the obligee at a reasonable cost and inform the child support agency that health insurance was obtained.
- To order a parent to provide private health insurance for the children, the private health insurance needs to be accessible and the private health insurance has to be a reasonable cost.
 - If the court orders a parent to provide health insurance for the children subject to the child support order that is not determined to be a reasonable cost, then the court must include a finding related to the ordering of private health insurance.

2. Cash Medical Support

- A child support order shall include a cash-medical-support amount for each child subject to the support order and split between the parties based on the parents' income shares.
 - If the children are on Medicaid, then the cash-medical support paid by the obligor is paid to the Department of Medicaid if there is a Medicaid assignment in effect for the child; otherwise the cash-medical-support amount is paid to the obligee if the children are not on Medicaid.
 - The court may deviate from the cash-medical-support amount.

PARENTING TIME [R.C. 3119.08]

- All child support orders must include specific parenting time or visitation orders for regular, holiday, and vacation parenting time, as well as special visitation.
- Child support must not be withheld because of the denial or interference with the right of parenting time.

DETERMINATION OF DEPENDENTS FOR FEDERAL INCOME-TAX PURPOSES

- When issuing or modifying a child support order, the court shall designate which parent may claim the children as dependents for federal income-tax purposes.
 - The court may accept the agreement of the parents; OR
 - The court is permitted to designate that the non-residential parent claims the children as dependents only if it determines that it would further serve the child's best interest.
- Factors to be considered
 - Net tax savings;
 - Relative financial resources and need of the children;
 - The amount of time the children spend with each parent;
 - The eligibility of either or both parents for the federal earned-income-tax credit or other state- or federal-tax credit;
 - Any other relevant factor concerning best interest.
 - The court is not required to discuss each factor as long as it discusses the operative facts related to the decision and the statute.
- The award is not in the nature of a property division and always is modifiable.

- The child support payments of the obligor must be substantially current in the year in which the children will be claimed as dependents, unless the parents agree.
- When awarding the non-residential parent the children as dependents, the court has inherent power to order the residential parent to release the exemption to the other parent or be subject to a finding of contempt.
- The court has no jurisdiction to enforce an award of tax dependency exemptions for emancipated children.

MODIFICATION OF PRIOR CHILD SUPPORT ORDERS [R.C. 3119.79]

- Jurisdiction
 - The domestic relations court retains jurisdiction to modify child support under the civil rules and statutes.
 - A motion to modify child support must be filed with the court and the other party must be served with the motion pursuant to the **Rules of Civil Procedure** for the court's jurisdiction to be invoked.
 - Exception for appeal from an administrative modification from a support enforcement agency.
 - The court may consider multiple worksheets based on the changes in income and status while the motion to modify is pending.
- Change in circumstances
 - Two-step analysis
 - The court must decide if change of circumstances exists.
- A difference of 10 percent is a change of circumstances. [R.C. 3119.79]
 - The 10-percent difference must be between the amount currently ordered and the new amount calculated pursuant to the child support worksheet.

- An alternative substantial change not contemplated at the time of the last order.
 - After finding a change of circumstance, the court must determine the appropriate amount of support.
 - No need to prove increase in the needs of the child to justify an increase.
 - Error to overrule a modification without explaining why it found no change of circumstances existed without completing a child support worksheet.
- Commencement date of support modification and retroactive child support
 - General rule modification effective on the date the motion is filed.
 - Choice of commencement date subsequent to date of filing is within discretion of the court.
 - A reason must be provided for commencement date if it is other than the date the motion filed.
 - A modification cannot commence prior to the physical possession of the child if the modification is based on a modification of parental rights.

TERMINATION OF CHILD SUPPORT OBLIGATION [R.C. 3119.88]

- Child attains 18 and finished high school;
- Beyond age 18 if child continuously attends, on a full-time basis, any recognized and accredited high school, but no later than age 19;
- If by separation agreement and parent agreed to pay child support beyond 18, the court may enforce the provision.

- Emancipation
 - Determined on a case-by-case basis dependent on individual facts and circumstances.
 - Party requesting termination bears burden of proving emancipation.
- Death of obligor-parent
 - Child support order does not survive the death of the obligor-parent unless the order provided for it to survive.
- Adoption
 - Terminates a child support order since the adoption terminates parental rights.
 - Past-due child support is not forgiven by adoption.
- Child's death
- Child's marriage
- Child's enlistment in the armed services
- Child's deportation
- Change of legal custody of the child.
- Marriage of the obligor to the obligee, if they reside together with the child.

NEED-BASED PAYMENTS

- Social Security Insurance (SSI) paid due to a child's disability is a need-based payment that fluctuates based on other sources of income for the child.
 - SSI received by a disabled child does not constitute a financial resource for the child to justify a deviation from the child support schedule.
 - Adoption subsidies received on behalf of a special-needs child may be treated the same way as SSI for a disabled child.
- Social Security Payments
 - Any benefits paid to a child on behalf of a parent that are non-means tested, including retirement, disability, or survivor benefits, are treated as a deviation against that parent's child support obligation.

ADMINISTRATIVE REVIEW OF COURT CHILD SUPPORT ORDER [R.C. 3119.60]

- A child support enforcement agency periodically or at the request of an obligor or obligee may review a court child support order.
- All of the following must be done prior to an agency review of a child support order:
 - Establish a date certain on which the review will formally begin;
 - At least 30 days before the formal review begins, the obligor and obligee must be sent notice of the planned review and the date the formal review will begin and that the review may add or adjust a payment on arrearages under [R.C. 3123.21](#);
 - Require each parent provide the following no later than the scheduled review date:
 - Copy of federal income-tax return from previous year;
 - Copy of all pay stubs obtained within the previous six months;
 - Copy of all records evidencing the receipt of any other salary, wages, or compensation within the preceding six months;
 - A list of group health insurance and health care policies, contracts, and plans available and their cost;
 - The current health care policy, contract, or plan in which the parent is enrolled;
 - When either parent is a member of the armed services and on active duty, a copy of IRS form W-2, "Wages and Tax Statements," and a copy of a statement detailing earnings and leave with the armed services;
 - Any other information necessary to properly review child support.

- If a court-ordered child support order is being reviewed, the notice shall include that a willful failure to provide the documents and information requested is contempt of court.
- Review of court child support order [R.C. 3119.63]
 - Calculate the revised amount of child support to be paid under court child support order;
 - Provide notice to the obligor and obligee of the revised amount of child support;
 - Provide notice to obligor and obligee of right to request administrative hearing on revised amount of child support;
 - Provide notice of procedures and time deadlines for requesting a hearing;
 - Provide notice that the revised amount of child support will be submitted to the court for inclusion in a revised child support order, unless a request for an administrative hearing on the proposed changes is made within 14 days of receipt of the notice;
 - Provide notice that if the court child support order contains a deviation or if the obligor or obligee intends to request a deviation from the child support amount to be paid under the court child support order, then the obligor or obligee has a right to request a court hearing without first requesting an administrative hearing and must make the request for a court hearing within 14 days of the receipt of the notice.
- The agency may apply the deviation from the existing child support order to the revised child support order provided it can determine the monetary or percentage value of the deviation.
- Administrative hearing timely requested
 - Schedule a hearing;
 - Give obligor and obligee notice of the hearing date, time, and location;
 - Conduct the hearing;
 - Redetermine the revised amount of child support to be paid under the court child support order;
- Provide notice that the obligor or obligee may request a court hearing on the revised amount of child support within 14 days after receipt of notice;
- Provide notice that if a court hearing is not requested, then the agency will submit the revised amount of child support to the court for inclusion in a revised child support order.
- Court hearing timely requested
 - The court shall schedule a hearing giving the obligor, obligee, and the agency at least 30 days' notice of the date, time, and location of the hearing.
 - The court must determine [R.C. 3119.66]:
 - Whether the revised amount of child support is in the appropriate amount; AND
 - Whether the amount of child support being paid under the court child support order should be modified.
- If the court determines the revised child support amount calculated by the agency is correct, then the court shall issue a revised court child support order.
- If the court determines that the revised child support amount calculated by the agency is not the appropriate amount:
 - Determine the appropriate child support amount;
 - If necessary, issue a revised court child support order requiring the obligor to pay the child support amount determined by the court.

- Modification relate back [R.C. 3119.71]
 - If a court hearing is not requested, then the modification shall relate back to the first day of the month following the date certain on which the review of the child support order began.
 - If a court hearing is requested and the court modifies the court child support order, then the modification shall relate back to the first day of the month following the date on which the review of the court child support order began.
- Factors considered in calculating revised amount of child support [R.C. 3119.73]
 - The agency shall consider, in addition to the other factors required by law:
 - The appropriate person – obligor, obligee, or both – to be required to provide health insurance coverage for the children;
 - The cost of health insurance coverage that obligor, obligee, or both have been ordered to obtain for the children.
 - In a hearing, the court shall consider, in addition to other factors required by law:
 - The appropriate person – obligor, obligee, or both – to be required to provide health insurance for the children;
 - The cost of health insurance that obligor, obligee, or both are ordered to obtain.

CONTEMPT

CONTEMPT

FOUR TYPES OF CONTEMPT

1. Direct Criminal [R.C. 2705.01]

- A court may summarily punish a person guilty of misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice.
 - The court must have personal knowledge of the act.
 - With summary punishment, no charges are filed, and no notice or hearing is required.



Person should be warned that he/she will be found in contempt if conduct continues.

- Rules of Evidence do not apply. [Evid.R. 101(D)(4)]
- Sentence serves as punishment to vindicate the court and should be unconditional (no purge condition) and must be commensurate with the completed act of disobedience committed.
 - Examples of sentencing may include jail time, fine, written apology, etc.
- Examples:
 - Attorney disobeying an order of the court during a trial.
 - A party yelling obscenities at the court during a hearing.

NOTE

The offense must occur to obstruct the administration of justice. For example, if the hearing concluded, an argument can be made that the offense does not obstruct the administration of justice.

2. Direct Civil [R.C. 2705.01]

- A court may summarily punish a person guilty of misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice.
 - The court must have personal knowledge of the act.
 - Summary punishment.

- Sentence is remedial or coercive in nature (a purge condition is given).
 - The contemnor can purge the contempt by complying with the order of the court.
- Example: A person on the witness stand refuses to answer a question and is sentenced to jail until he agrees to answer the question.

3. Indirect Criminal [R.C. 2705.02]

- A person guilty of any of the following acts may be punished for contempt:
 - Disobedience of a lawful order;
 - Misbehavior of an officer of the court in the performance of official duties;
 - Failure to obey a subpoena duly served or a refusal to be sworn, or to answer as a witness;
 - Willful failure to submit to genetic testing or submit a child to genetic testing, as required by an order issued under R.C. 3111.41.
- Hearing [R.C. 2705.03]
 - Written charges must be filed with the clerk of court.
 - A hearing is required. However, the court may issue a warrant to secure the party's appearance for hearing.
 - Proof beyond a reasonable doubt.
 - Intent is an essential element. Reckless or indifferent regard for the court's order.
- Sentence serves as punishment to vindicate the court and should be unconditional (no purge condition) and must be commensurate with the completed act of disobedience committed.
- Example: An attorney fails to show up at a court hearing and does not call to inform the court. The judge, after a hearing on the contempt charge, finds the attorney in contempt and sentences him to one day in jail.

4. Indirect Civil [R.C. 2705.02]

- This is an act that occurs outside the presence of the court.
 - Example: Non-payment of child support order
- Written pleading must be filed.
- A hearing is required; however, the court may issue a warrant to secure the party's appearance for hearing.
- The burden of proof is on the moving party – clear and convincing evidence.
 - Intent is irrelevant
- Sentence must have a purge condition that can be met in order to avoid the penalty



Purge condition must be more than compliance with the current order



In a contempt that occurred in front of a magistrate, the summary proceeding must be heard by a judge and not a magistrate.



Imposition of sentence should be approved by a judge and not a magistrate.

CONTEMPT FOR FAILURE TO PAY SUPPORT OR COMPLY WITH PARENTING TIME OR VISITATION ORDER [R.C. 2705.031]

1. Any party who has a legal claim to any support order for child, spouse, or former spouse may initiate an action for contempt.



Check local rules to determine who is responsible for sending summons to ensure compliance.

2. Any parent or person with rights to any parenting time or visitation order may initiate an action for contempt.

3. Certain notices must be included in the summons served on the contemnor.

[See R.C. 2705.031(C)]



Check local practice for acceptable methods of service in contempt proceedings.

4. Service on the party is required for contempt proceedings. [Civ.R. 4-4.6]
5. There is a right to counsel in cases where incarceration is a possible sanction.
 - Although technically the right to counsel applies only to the contempt proceeding and not necessarily the purge hearing, the Ohio Public Defender's Office will reimburse for appointed counsel in purge hearings as well.

DEFENSES TO INDIRECT CONTEMPT CHARGES

1. Inability to comply
 - Obligor must prove by preponderance the inability to comply and must be without fault in creating the inability.
2. Laches
 - Obligor must prove the unreasonable lengthy delay caused material prejudice.
 - This defense normally fails in child support cases because a delay in enforcing the order normally serves as a benefit rather than a detriment.
3. Obligation was reduced to judgment
 - Check your appellate jurisdiction. There is a split between appellate jurisdictions as to whether contempt charges may continue after a money obligation is reduced to judgment.
4. Protection of the children (failing to follow visitation orders)
 - The need to protect children from harm may be a defense, but ultimately it is up to the court to decide whether the belief that the children were in danger was reasonable.

5. Purge after the contempt motion was filed

- While not technically a defense, if the order was followed after the filing of the motion, but before hearing, then the respondent may not be held in contempt. However attorney's fees (and court costs) may be awarded.

ADDITIONAL REMEDIES/CONSIDERATIONS

[R.C. 3109.051(K)]

If a person is found in contempt for failing to comply with any order or decree granting parenting time, companionship, or visitation rights, then court costs and reasonable attorney's fees shall be assessed, and the court may award reasonable compensatory parenting time or visitation if the compensatory time is in the best interest of the child.



Modification of the existing order is NOT a remedy for contempt. Modification only may be accomplished after notice and hearing on a motion to modify.



DISSOLUTION

DISSOLUTION

VENUE

- One party shall have been a resident of the state for at least six months immediately before filing the petition. [R.C. 3105.62]
- The action shall be brought in the proper county for commencement of actions pursuant to the Civil Rules of Procedure. [See Civ.R. 3(B)]

SERVICE

- Both petitioners are considered defendants and are subject to service of process as defendants. [R.C. 3105.62]



Petitioners may waive service and acknowledge receipt of a copy of the petition by including a waiver paragraph within the petition.

DOCUMENTS REQUIRED AT FILING

[R.C. 3105.63]

- Petition
- Separation Agreement
- Affidavits
 - Income and Expenses
 - Property
 - Parenting Proceeding (if children)
 - Health Insurance (if children)
- Shared Parenting Plan (if children)



If one party is represented, then Acknowledgement of Representation should be filed.



Local rules may require local child support enforcement agency forms at filing or final hearing.

CONVERSION

- At any time after the filing of a petition prior to a decree, either party may convert the action to a divorce by filing a motion that includes a copy of the complaint. [R.C. 3105.65(C)]

FINAL HEARING

- Both petitioners must appear at the final hearing not less than 30 days, but no longer than 90 days from the date of the filing of the petition for the final hearing. [R.C. 3105.64]
- If parties have participated in collaborative law process, then hearing may be held before 30 days. [R.C. 3105.64(C)]

Decree must include or incorporate:

- Separation Agreement
- Shared Parenting Plan (if children)

Questions for parties' checklist at hearing

- Name
- Address
- Resident for six months in Ohio
- Date of marriage
- Location of marriage
- Children
- Pleadings
 - Have you/Do you:
 - Read
 - Understand
 - Disclosed all financial assets and obligations
 - Believe the financial terms to be fair and equitable to both parties
 - Voluntarily executed
 - Believe that provisions for children are in the best interests of the children
 - If child support deviation, make inquiry

- Understand that the court will not retain jurisdiction to modify property division
- Understand that the court will not retain jurisdiction to modify spousal support unless specifically included in the separation agreement
- Restoration of former name
- Currently pregnant
- Bankruptcy
- Active duty military

- If only one party is represented, make an inquiry regarding counsel for unrepresented party
- Do you wish for the court to adopt the decree(s), make them a final order, and dissolve your marriage?

DISMISSAL [Civ.R. 75(P)]

- A dismissal of a dissolution action by a court or one party, other than a denial on the merits, does not prevent a subsequent filing of the same action.

DISSOLUTION CHECKLIST: WITHOUT CHILDREN

Petition	<ul style="list-style-type: none"> • Date of marriage • Jurisdiction: Lived in Ohio for 6 months prior to filing (county not important for dissolution) • Number of children born during marriage to the parties and their dates of birth; state if emancipated • Signed by both parties
Confidential Disclosure	
Certificate of Assignment	
Waiver of Representation (when only one party is represented)	
Service of Summons/Waiver	
Affidavit of Property – Husband	
Affidavit of Property – Wife	
Affidavit of Income – Husband	
Affidavit of Income – Wife	
Separation Agreement	<ul style="list-style-type: none"> • Are all assets/debts listed in affidavits addressed here? • Are there additional assets/debts included that are on affidavits? • Dower rights/quit claim deed (real estate)
Decree of Dissolution with Praecipe	

DISSOLUTION CHECKLIST: WITH CHILDREN

Petition	<ul style="list-style-type: none"> • Date of marriage • Jurisdiction: lived in Ohio for 6 months prior to filing (county not important for dissolution) • Number of children born during marriage/to the parties and their dates of birth; state if emancipated • Address paternity if it is an issue • Signed by both parties
Confidential Disclosure	
Certificate of Assignment	
Waiver of Representation (when only one party is represented)	
Service of Summons/Waiver	
Affidavit of Property – Husband	
Affidavit of Property – Wife	
Affidavit of Income – Husband	
Affidavit of Income – Wife	
Separation Agreement	<ul style="list-style-type: none"> • Are all assets/debts listed in affidavits addressed here? • Are there any additional assets/debts included that are on affidavits? • Dower rights/quit claim deed (real estate) • Shared Parenting (separate document from the Separation Agreement) <ul style="list-style-type: none"> ○ Shared Parenting Plan (school placement, parent possession, schedule) ○ Shared Parenting Decree (will incorporate the Shared Parenting Plan. If the plan is not filed more than 30 days ahead, must waive 30-day requirement) • Sole custody to one parent (contained within the Separation Agreement) <ul style="list-style-type: none"> ○ Name custodial parent ○ Determine parenting time schedule <p>Both shared parenting and sole custody require:</p> <ul style="list-style-type: none"> • Allocation of tax dependency • Health insurance • Uncovered medical expenses • Child Support <ul style="list-style-type: none"> ○ Deviation (entry) ○ Termination ○ Withholding orders and instructions for service • Title IV-D application
Decree of Dissolution with Praeceptum	



DIVORCE

DIVORCE

VENUE

- Plaintiff must be a resident of Ohio for at least 6 months [R.C. 3105.03]
- Plaintiff must be a resident of the county at least 90 days [Civ.R. 3(C)(9)]
 - This requirement may be waived if both parties consent.



Common law marriage is not valid in Ohio after 1991 [R.C. 3105.12]



A Uniform Child Custody Jurisdiction & Enforcement Act (UCCJEA) affidavit must be filed in all cases involving allocation of parental rights and responsibilities. See Allocation of Parental Rights and Responsibilities Bench Card for more information.

SERVICE

- Pursuant to Civ.R. 4 and 4.1, the clerk serves by certified mail or personal service.
 - If certified mail fails, service still must be perfected. If certified mail is unclaimed, it may be sent by ordinary mail. All mailing must be done by the clerk's office.
- Service by publication when residence is unknown [R.C. 3105.06; Civ. R. 4.4]
- Service by posting is available when party has filed an affidavit of indigency [Civ.R. 4.4(A)(2)]
- Service may be waived by the defendant. [Civ.R. 4(D)]



Out-of-state personal service must be ordered [Civ. R. 4.3(B)(2)]



Check that certified mail is not signed by the plaintiff spouse.

GROUND [R.C. 3105.01]

1. No-Fault Grounds

- No-fault grounds often are stipulated by the parties. Fault-grounds cases require an evidentiary hearing. In all cases, a corroborating witness is required.
- No-fault grounds:
 - Living separate and apart without cohabitation for more than one year
 - Incompatibility, unless denied by either party



If the parties allege fault grounds, then consider setting a bifurcated motion hearing.

2. Fault Grounds:

- One party had a spouse living at the time of the marriage
- Willful absence of the other party for one year
- Adultery
- Extreme cruelty
- Fraudulent contract
- Gross neglect of duty
- Habitual drunkenness
- Imprisonment of adverse party in a state or federal correctional institution when complaint filed
- A divorce has been obtained outside of Ohio by either party, with remaining marital obligations (such as property and parental rights and responsibilities) to be determined by the court



The court may amend the complaint to conform to the evidence.

CONVERSION

At any time before a final judgment is entered in a divorce action, the spouses may convert the action into an action for dissolution of marriage by filing a motion with the court that includes a petition for dissolution of marriage. [R.C. 3105.08]

TEMPORARY ORDERS

See Temporary Orders Bench Card.

FINAL HEARING

- Both parties must be present, or one party and a corroborating witness.
- Can you proceed? Things to consider:
 - Pending bankruptcy
 - Current pregnancy
 - Active military service
 - Filing of required affidavits
 - Completion of court-ordered parenting seminars
 - Restoration of former name shall be ordered if requested [R.C. 3105.16]
- Hearing Process
 - Hearing may take place 42 days after service of process or 28 days after the last publication [Civ.R. 75(K)]
 - If there is a counterclaim, then the hearing may not take place until 28 days after service of the counterclaim, unless there is a written waiver [Civ.R. 75(K)]
 - Notice must be sent seven days in advance to a self-represented party [Civ.R. 75(L)]
 - Attorney's fees may be awarded [R.C. 3105.73]
 - A final judgement entry must resolve all issues, including the division of property and debt (separate, marital and pre-marital, spousal support and the allocation of parental rights and responsibilities). [Civ.R. 75(F)]

- A final judgement entry that adopts a magistrate's decision shall include all of the findings.

MARITAL PROPERTY [R.C. 3105.171]

For purposes of valuation of marital property, the duration of the marriage is presumed to be from date of marriage until date of decree, unless proven otherwise.

See Equitable Division of Property Bench Card.



All property is presumed to be marital unless and until proven otherwise.

1. Marital property includes real or personal property, including intangible property, acquired by either of the spouses during the marriage [R.C. 3105.171(A)(3)(a)]
 - Intangible property may include:
 - Retirement benefits
 - Stock options
 - Tax refunds or obligations
 - Cash value of life insurance
 - Bank accounts
 - Investment accounts
 - Debts
 - Credit cards
 - Loans, both secured and unsecured
2. Income or appreciation of separate property resulting from the labor, monetary, or in-kind contribution of either spouse during the marriage
3. Any money deferred during the marriage
4. Considerations during division of property:
 - Divide property equally unless it would be inequitable. [R.C. 3105.171(C)(1)]
 - May make a distributive award instead of, or in addition to, a division of property to achieve equity.

- Distributive award means any payments that are made from property or income that is separate from marital property [R.C. 3105.171(A)(1)]
- May consider financial misconduct in award of marital property
 - Financial misconduct includes dissipation, destruction, concealment, nondisclosure, or fraudulent disposition of assets [R.C. 3105.171(E)(4)]

SEPARATE PROPERTY [R.C. 3105.171(A)(6)(A)]

- Property acquired prior to marriage or as a result of inheritance
- Passive income from separate property
- Property acquired by one spouse after a legal separation or excluded by an antenuptial agreement or postnuptial agreements.

*See Legal Separation Bench Card
and Prenuptial Agreements Bench Card.*

- Compensation for personal injury, except for loss of marital earnings and expenses paid with marital funds
- A gift made after the marriage to only one spouse, if proven by clear and convincing evidence

SPOUSAL SUPPORT [R.C. 3105.18]

Spousal support includes payments both for sustenance and for support of the spouse or former spouse. It does not include any payment made as part of a division or distribution of property or a distributive award. [R.C. 3105.18(A)]

1. Considerations in determining whether spousal support is appropriate and reasonable, and in determining the nature, amount, terms of payment, and duration. [R.C. 3105.18(C)]
 - Income of the spouses from all sources
 - Relative earning ability

- Age, physical, mental and emotional health of the spouses
- Retirement benefits of the spouses
- Duration of the marriage
- If it is not appropriate for a spouse to seek work because of caring for a child of the marriage
- Standard of living during the marriage
- Relative extent of education of the spouses
- Relative assets and liabilities of the spouses
- Contribution by the parties to a spouse's education, training, or earning ability
- Time and expenses of a spouse to acquire education
- Tax consequences of an award
- Lost income of a spouse resulting from marital responsibilities
- Any other factor

2. Additional considerations

- Support may be an award of property, lump sum payment, or periodic payments [R.C. 3105.18(B)]
- Attorney's fees may be awarded as spousal support [R.C. 3105.73]

*See Allocation of Parental Rights
& Responsibilities Bench Card.*

DISMISSAL [Civ.R. 75(P)]

- A dismissal of a divorce action by a court or one party, other than a denial on the merits, does not prevent a subsequent filing of the same action.

DIVORCE CHECKLIST: WITHOUT CHILDREN

Complaint	<ul style="list-style-type: none"> • Date of marriage • Jurisdiction: lived in Ohio for 6 months • Grounds stated • Relief requested/demanded (divorce, spousal support, etc.)
Affidavit of Property	
Affidavit of Income	
Service of Summons/Waiver	
Divorce Decree with Praecipe	<ul style="list-style-type: none"> • Must find: <ul style="list-style-type: none"> ○ What was present for hearing ○ Date of hearing ○ Service ○ Jurisdiction ○ Date of marriage/duration ○ Full disclosure of assets/debts ○ Wavier of valuation of assets/debts if applicable ○ Grounds • Must order: <ul style="list-style-type: none"> ○ Termination of marriage ○ Divisions of assets/debts ○ Allocation of tax liability ○ Spousal support and address future jurisdiction ○ Restore name if desired (Husband cannot force Wife to restore if she does not request to do so) ○ Payment of court costs ○ Effective date next to Judge's signature line ○ Must have signature of parties and attorneys
Affidavit of Findings of Fact if division of assets and debts is not agreed (Separation Document)	

DIVORCE CHECKLIST: WITH CHILDREN

Complaint	<ul style="list-style-type: none"> • Date of marriage • Jurisdiction: lived in Ohio for 6 months • Grounds stated • Relief requested/demanded (divorce, spousal support, etc.) • Number of children born during the marriage/to the parties, including dates of birth, state if emancipated • Paternity of minor children born prior to the marriage or during marriage and not of the parties • Relief requested/demanded (divorce, shared parenting, etc.)
Affidavit of Property	
Affidavit of Income	
Parenting Proceeding Affidavit	
Health Insurance Affidavit	
Service of Summons/Waiver	
Divorce Decree with Praeceptum	<ul style="list-style-type: none"> • Must find: <ul style="list-style-type: none"> ○ What was present for hearing ○ Date of hearing ○ Service ○ Jurisdiction ○ Date of marriage/duration ○ Full disclosure of assets/debts ○ Waiver of valuation of assets/debts if applicable ○ Grounds • Must order: <ul style="list-style-type: none"> ○ Termination of marriage ○ Divisions of assets/debts ○ Allocation of tax liability ○ Spousal support and address future jurisdiction ○ Restore name if desired (Husband cannot force Wife to restore if she does not request to do so) ○ Payment of court costs ○ Effective date next to Judge's signature line ○ Must have signature of parties and attorneys • Allocation of custody and parenting time – either: <ul style="list-style-type: none"> ○ Parenting (separate document from the divorce decree) ○ Shared Parenting Plan (school placement, parent possession, schedule) ○ Shared Parenting Decree (will incorporate the Shared Parenting Plan. If the Plan is not filed more than 30 days ahead, must waive 30 day requirement) ○ Sole Custody to One Parent (contained within the divorce decree) ○ Name custodial parent ○ Determine parenting time schedule • Both Shared Parenting and Sole Custody require: <ul style="list-style-type: none"> ○ Allocation of Tax Dependency ○ Health Insurance ○ Uncovered medical expenses ○ Child Support <ul style="list-style-type: none"> • Deviation (entry) • Termination • Withholding Orders and Instructions for Service • Title IV-D Application
Affidavit of Findings of Fact if division of assets and debts is not agreed (Separation Document)	



EQUITABLE DIVISION OF PROPERTY

DURATION OF MARRIAGE (DE FACTO DATE)

- Used for the determination of the marital estate
- Legal presumption duration is from date of marriage to date of final hearing. However:
 - De facto date may refer either to the date of commencement of the marriage or date of termination of the marriage.
 - If either legally presumed date is inequitable, then the court may select dates it considers equitable.
- Common examples:
 - Parties reside together for many years prior to marriage.
 - Parties separate well in advance of filing divorce.



Districts may conflict on the issue of commencement of marriage; check district decisions (e.g., *Bryan v. Bryan*, 8th Dist. Cuyahoga No. 97817, 2012-Ohio-3691; *Ward v. Ward*, 9th Dist. Summit No. 26372, 2012-Ohio-5658).

FACTORS TO CONSIDER

[*Rogers v. Rogers*, 10th Dist. Franklin Nos. 96APF10-1333, 96APF01-67, 1997 WL 559479 (Sept. 2, 1997).]

1. Termination prior to final hearing still may apply even though one party provides support for at least part of the separation;
2. The parties separated on less than friendly terms;
3. Testimony indicates the marriage was over a year prior to the date of separation;
4. One party cohabitates with another shortly after separation;
5. The parties never engage in intimate relations as husband and wife after separation (regardless if on a few occasions the party returns to the marital residence);

6. The retention of legal counsel/legal counsel intervenes into parties' marriage;
7. The parties cease living together and maintain separate residences;
8. The date the divorce complaint was filed;
9. The parties' discussions of possible termination of their marriage prior to actual separation;
10. No financial entanglement (parties use separate bank accounts, separate life insurance, separate credit cards);
11. No meaningful attempts at reconciliation;
12. Separate business activities;
13. Both parties are involved in extramarital relationships;
14. The parties take separate vacations with other sexual partners;
15. The parties have not served as a social host for the other;
16. The parties have not attended social, business, or school events as a couple since the time of separation;
17. The parties cease contributing to each other for each other's benefits as partners would do in a joint undertaking; AND
18. Totality of the circumstances and equitable considerations.

OTHER CONSIDERATIONS

- Actions of the parties must be bilateral and not unilateral in nature. [*Day v. Day*, 40 Ohio App.3d 155, 158, 532 N.E.2d 201 (10th Dist. 1988).]
- "There are no 'flat rules' in choosing a date of valuation and the date of separation does not automatically demonstrate a de facto termination of marriage." [*Grody v. Grody*, 10th Dist. Franklin No. 07APF-690, 2008-Ohio-4682, ¶8, citing *Rogers v. Rogers*, 10th Dist. Franklin Nos. 96APF10-1333, 96APF01-67, 1997 WL 559479 (Sept. 2, 1997)]

- “The precise date upon which any marriage irretrievably breaks down is extremely difficult to determine....It is the equitableness of the result reached that must stand the test of fairness on review.”
[*Berish v. Berish*, 69 Ohio St.2d 318, 319, 432 N.E.2d 183 (1982).]

R

- Set a hearing on the de facto issue well prior to final hearing.
- Make counsel commit to specific date.
- Require party or parties requesting a de facto date to have rough marital balance sheets for both dates.

LEGAL SEPARATION

LEGAL SEPARATION

JURISDICTION & VENUE

- No specific residency requirement [R.C. 3105.03]
- Proper venue [Civ.R. 3]
- Must be a resident in the county for at least 90 days prior to filing the complaint

SERVICE

See Divorce Bench Card.

GROUND [R.C. 3105.17]

- For a legal separation, the parties do not need to be living separate and apart at the time the matter is filed. [R.C. 3105.17(A)]
- No-fault grounds often are stipulated by the parties. Fault-ground cases require an evidentiary hearing. In all cases, a corroborating witness is required who must demonstrate knowledge of the facts and the party.



If the parties allege fault grounds, then consider setting a bifurcated motion hearing.

- No-fault grounds:
 - Living separate and apart without cohabitation for more than one year
 - Incompatibility, unless denied by either party.
- Fault grounds:
 - One party had a spouse living at the time of the marriage

NOTE

Also may be grounds for annulment [R.C. 3105.31]

- Willful absence of the other party for one year
- Adultery
- Extreme cruelty
- Fraudulent contract

- Gross neglect of duty
- Habitual drunkenness
- Other party imprisoned in a state or federal correctional institution when complaint filed

TEMPORARY ORDERS

See Temporary Orders Bench Card.

FINAL HEARING

- May award attorney's fees [R.C. 3105.73]
- Issues that must be resolved:
 - Order for disposition, care, and maintenance of children [R.C. 3105.21]
 - A final entry MAY resolve all issues, including the division of property and debt (e.g., separate, marital, and pre-marital, spousal support, and the allocation of parental rights and responsibilities). [R.C. 3105.171(B)]



Issues are limited with service by publication.

- A final judgement entry that adopts a magistrate's decision shall include all of the findings.

MARITAL PROPERTY [R.C. 3105.171(B)]

- In legal-separation proceedings, the court may (but is not required to) divide marital property.

See Marital Estate/Marital Property/Separate Property section of Divorce Bench Card.

SPOUSAL SUPPORT [R.C. 3105.18(B) and (D)]

- Does not require a specific reservation of jurisdiction to modify. Modifications may be considered upon changed circumstances [R.C. 3105.18(D)]

See Divorce Bench Card.

PARENTAL RIGHTS AND RESPONSIBILITIES

- The court shall make orders for the disposition, care, and maintenance of the children in accordance with R.C. 3109.04. [R.C. 3105.21]

See Allocation of Parental Rights & Responsibilities Bench Card.

DISMISSAL [Civ.R. 75(P)]

- A dismissal of a legal separation action by a court or one party, other than a denial on the merits, does not prevent a subsequent filing of the same action.

TERMINATION [R.C. 3105.17(C)]

- A court may dissolve a decree of legal separation upon receiving a joint motion signed by both spouses.

MOTIONS TO SET ASIDE

MOTIONS TO SET ASIDE & OBJECTIONS [Civ.R. 53]

MAGISTRATE'S ORDER/MOTION TO SET ASIDE [Civ.R. 53(D)(2)(A)(I)]

- A magistrate may enter orders without judicial approval, if necessary, to regulate the proceedings and if not dispositive of a claim or defense.

MOTION TO SET ASIDE [Civ.R. 53(D)(2)(B)]

- The motion shall state the moving party's reason with particularity.
- Shall be filed no later than 10 days after magistrate's order is filed.
- Pendency of motion does not stay the effectiveness of the magistrate's order.
- Court may order a stay, if reasonable and necessary.



Attorneys seeking to modify temporary orders should utilize a Request for a De Novo Hearing pursuant to Civ.R. 75(N)(2), not a Motion to Set Aside.

MAGISTRATE'S DECISION/OBJECTIONS [Civ.R. 53(D)(3)]

- Findings of fact and conclusions of law [Civ.R. 53(D)(3)(a)(ii)]
 - A magistrate's decision may be general unless findings of fact and conclusions of law are requested or required.
 - Request shall be within seven days of decision.
 - Magistrate may require any or all parties to submit proposed findings and conclusions.
- Time for filing [Civ.R. 53(D)(3)(b)(i)]
 - Written objections must be filed within 14 days of filing of the decision.
 - If objections are filed, then the other party may file objections no later than 10 days after the first objection is filed.

- If a timely request for findings and conclusions is made, then the time for objections begins to run when the magistrate files a decision that includes the findings and conclusions.
- Specificity [Civ.R. 53(D)(3)(b)(ii)]
 - An objection shall be specific and state with particularity all grounds for the objection.
- Transcript [Civ.R. 53(D)(3)(b)(iii)]
 - An objection to a factual finding shall be supported by a transcript of all evidence submitted to the magistrate (few exceptions).
 - Transcript to be filed within 30 days (extensions commonly granted).
 - May seek leave to court to supplement after filing of transcript (generally granted).
- Actions on objections [Civ.R. 53(D)(4)(d)]
 - The court shall undertake an independent review as to the objected matters to ascertain that the magistrate properly determined factual issues and appropriately applied the law.
- Additional evidence [Civ.R. 53(D)(4)(d)]
 - The court may hear additional evidence, but may refuse to do so unless the objecting party demonstrates that the party could not, with reasonable diligence, have produced the evidence.
- Entry or Order [Civ.R. 53(D)(4)(e)]
 - A court may adopt, reject, or modify a magistrate's decision and shall enter a judgment or interim order.
- Stay [Civ.R. 53(D)(4)(e)(i)]
 - A timely filing of objection acts as an automatic stay.

- Interim Order [Civ.R. 53(D)(4)(e)(ii)]
 - The court may enter an interim order on the basis of a magistrate’s decision without waiting for a ruling on the objections if relief is justified.
 - Objections do not stay interim orders.
 - Interim orders shall not extend more than 28 days, subject to extensions by the court of increments of 28 additional days for good cause shown.
- Extension of time [Civ. R. 53(D)(5)]
 - Upon showing “good cause,” the court shall grant extensions to file a Motion to Set Aside or Objections.

PATERNITY

NOTE

This card mainly pertains to paternity in domestic relations cases and is not intended to cover all aspects of parentage as may be encountered in cases involving unmarried parents.

PRESUMPTION OF PATERNITY [R.C. 3111.03]

A man is presumed to be the natural father when:

- Parents are or have been married (or believed they had a valid marriage) and the child is born during the marriage;
- The child is born within 300 days after the marriage is terminated; OR
- An acknowledgment of paternity was filed pursuant to R.C. 3111.23 and did not become final under R.C. 2151.232, R.C. 3111.25 or R.C. 3111.821.
 - Acknowledgement becomes final 60 days after the last signature on the acknowledgment. [R.C. 3111.27]
 - Every signature on an acknowledgment must either be notarized or witnessed by two adults. [R.C. 3111.23(C)]

The above presumptions are **REBUTTABLE** by clear and convincing evidence which includes genetic testing. However, in artificial insemination cases, the presumptions are conclusive and cannot be rebutted. [See R.C. 3111.95 and R.C. 3111.97]

- Acknowledgements that become final are not presumptions, but rather a final enforceable determination unless rescinded.
- If an acknowledgment or other paternity determination becomes final, then a Motion for Relief from Judgment may be filed with the appropriate court. [R.C. 3119.961]
- Civ.R. 60(B) time limit does not apply to a Motion for Relief from Judgment as it pertains to disestablishment of paternity.

GESTATIONAL SURROGATE CONTRACTS

- An exception to the presumption of paternity. These contracts are not a violation of public policy. [*J.F. v. D.B.*, 116 Ohio St.3d 363, 2007-Ohio 6750, 879 N.E.3d 363.]

AGREEMENTS TO EXCLUDE THE HUSBAND AS THE FATHER IN DIVORCE OR DISSOLUTION PROCEEDINGS

- Decrees or separation agreements may specify that the husband is not the father of a particular child. The decree need not specify who the father is in it.



A third party (non-husband) cannot be decreed to be the father in a dissolution proceeding due to that person not being a party to the dissolution. A separate parentage action would need to be filed in juvenile court to establish paternity.



If the husband was excluded as the father in the divorce or dissolution decree, then he is not a required party in a subsequent parentage case to determine paternity.

Other presumptions may exist prior to March 22, 2001. [R.C. 3111.03(c)]



PRENUPTIAL AGREEMENTS

TEST FOR VALIDITY AND ENFORCEABILITY

Three conditions must be met [*Gross v. Gross*, 11 Ohio St.3d 99, 105, 464 N.E.2d 500 (1984).]:

1. Entered into freely without fraud, duress, coercion, or overreaching;
2. Full disclosure or full knowledge and understanding of the nature, value, and extent of the other parties' property; AND
3. The terms do not promote or encourage divorce or profiteering by divorce.

COUNSEL

- The party who would be financially disadvantaged by the enforcement of the agreement must have had a meaningful opportunity to consult with counsel. [*Fletcher v. Fletcher*, 68 Ohio St.3d 464, 470, 628 N.E.2d 133 (1993).]



Waiver of right to counsel specifically addressed.

INTERPRETATION

- Antenuptial agreements are contracts, so the law of contracts generally applies to their interpretation and application. However, certain special rules apply considering the fiduciary relationship between the parties. [*Fletcher v. Fletcher*, 68 Ohio St.3d 464, 470, 628 N.E.2d 133 (1993).]

BURDEN

1. Disproportionate Results
 - If a party receives disproportionately less than what he/she would receive from an equitable distribution, then the party claiming the agreement is valid has the “burden” that there was full disclosure or knowledge of the assets. [*Fletcher v. Fletcher*, 68 Ohio St.3d 464, 470, 628 N.E.2d 133 (1993).]

2. Fraud, Duress, Coercion or Overreaching

- The burden remains with the challenging party. [*Fletcher v. Fletcher*, 68 Ohio St.3d 464, 470, 628 N.E.2d 133 (1993).]

3. Time Constraints

- If the antenuptial agreement is presented a very short time before the wedding ceremony and the postponements of the same would cause a significant hardship, embarrassment, or emotional distress, then there arises a presumption of overreaching or coercion. [*Fletcher v. Fletcher*, 68 Ohio St.3d 464, 470, 628 N.E.2d 133 (1993).]

SPOUSAL SUPPORT PROVISIONS

- The Court held that the court may modify the provision(s) set forth in the antenuptial agreement if, at the time of divorce, such provisions are unconscionable. [*Gross v. Gross*, 11 Ohio St.3d 99, 109-110, 464 N.E.2d 500 (1984).]
 - The party claiming the unconscionability of the spousal support provision, by way of motion for modification, has the burden of showing its unconscionable effect at the time of divorce, and the court shall use the factors set forth in R.C. 3105.18 to determine the issue of unconscionability and the reasonableness of the spousal support provisions. [*Gross v. Gross*, 11 Ohio St.3d 99, 109-110, 464 N.E.2d 500 (1984).]



If the validity of agreement is raised and/or challenged, then bifurcate and set a hearing well in advance of the final hearing to determine the validity of the agreement.

Look for schedules attached to the agreement for assets and liabilities.



TEMPORARY ORDERS

TEMPORARY ORDERS

NOTE

Temporary orders are meant to maintain the status quo with regard to finances and care of children. Temporary orders are subject to modification and are not binding when final orders are made.

PROCEDURAL ISSUES

- Temporary orders may be requested in the complaint, answer, counterclaim, or by separate motion [Civ.R. 75(N)]

NOTICE/SERVICE

- Ensure all parties to the action received proper notice and service. [Civ.R. 1 and 4]

HEARING PROCEDURE [Civ.R. 75(N)]



Courts may hold temporary-order hearings by affidavit or in-person hearing.



The court has the authority to set parameters as to the amount of evidence, time permitted for testimony, page limitations, etc. Check your jurisdiction's local rules.

- Rules of Evidence – relaxed, via affidavit, granted for “good cause shown” [Civ.R. 75(N)]
- Non-oral hearing
 - Contested
 - Uncontested – May be issued if no counter affidavit is filed within 14 days from date of service.

CONTENTS OF ORDER

- Temporary custody/parenting time [R.C. 3109.043; Civ.R. 75(N)]
- Support [R.C. 3105.18 (spousal); R.C. 3109.043 (child); Civ.R. 75(N)]
- Attorney’s fees [R.C. 3105.73(A); Civ.R. 75(N)]
- Expert witness fees
- Guardian ad litem fees
- Allocation of debts [R.C. 3105.18; Civ.R. 75(N)]
- Exclusive use of the marital residence
- Beneficial use of property (e.g., automobile)

CASEFLOW

- May be conducted anytime pre-decree during pendency of the case with proper notice and service [Civ.R. 75(N)]
- Modification of temporary orders [Civ.R. 75(N)(2)]
 - Oral hearing held within 28 days, upon request.

ADDITIONAL TEMPORARY ORDERS:

- Temporary Restraining Order [Civ.R. 75(I)]
 - Must be supported by affidavit [Civ.R. 75(I)(2)]
- Prohibit cancelling health insurance [R.C. 3105.71]



UCCJEA

UNIFORM CHILD CUSTODY JURISDICTION & ENFORCEMENT ACT (UCCJEA) [R.C. CHAPTER 3127]

1. Addresses the interstate recognition and enforcement of child custody orders.
2. A child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of the Revised Code shall be recognized and enforced.
 - A court does not need to follow the provisions of the UCCJEA if the law governing child custody determinations in a foreign country violates fundamental principles of human rights.
3. Child custody determinations made in Ohio bind all persons who were:
 - Served pursuant to the [Ohio Rules of Civil Procedure](#);
 - Notified pursuant to [R.C. 3127.07](#);
 - Submitted to the jurisdiction of the court; AND
 - Given an opportunity to be heard.
4. Notice
 - Required pursuant to the [Ohio Rules of Civil Procedure](#) to exercise jurisdiction over a person outside the state;
 - Must be made in a manner reasonably calculated to give actual notice;
 - Is not required if a person submits to the jurisdiction of the court.
5. Jurisdiction to make an initial determination of custody [\[R.C. 3127.15\]](#)
 - Ohio is the home state of the child on the date of the commencement of the proceeding;
 - **Home State** – The state in which the child lives with a parent for at least six consecutive months immediately preceding the commencement of a child custody proceeding.
 - Ohio was the home state within six months before the commencement of the proceedings and the child is absent from the state, but a parent still lives in Ohio;
- A court of another state does not have jurisdiction;
- A court of the home state declined to exercise jurisdiction because Ohio is a more appropriate forum and both of the following apply:
 - The child and the child's parents or the child and one parent have significant connection to the state beyond physical presence; AND
 - Substantial evidence is available in Ohio regarding the child's care, protection, training, and personal relationships.
- All courts having jurisdiction declined to exercise jurisdiction on the basis that Ohio is a more appropriate forum.
- No other court of any other state has jurisdiction.
6. Exclusive continuing jurisdiction
 - An Ohio court that has made a child custody determination has exclusive, continuing jurisdiction over the custody determination until the Ohio court or a court of another jurisdiction determines that the child, the child's parents, or a person acting as a parent no longer resides in Ohio.
 - The continuing jurisdiction of the court is invoked by a motion filed in the original action.
 - Pursuant to [Civ.R 75\(J\)](#), service of process must be perfected pursuant to [Civ.R 4-4.6](#).
 - Post-decree motions must be served on the party to invoke the court's continuing jurisdiction.
7. Modification of child custody determination [\[R.C. 3127.17\]](#)
 - An Ohio court may not modify a child custody determination made by a court of another state unless the Ohio court has jurisdiction to make an initial custody determination, AND

- The court of the other state determines it no longer has exclusive, continuing jurisdiction or that the Ohio court would be a more convenient forum; OR
 - The Ohio court or the other state court determines that the child, the child's parents, or any person acting as a parent no longer reside in Ohio.
8. Temporary emergency jurisdiction [R.C. 3127.18]
- An Ohio court has temporary emergency jurisdiction if a child is present in Ohio, AND
 - The child has been abandoned; OR
 - It is necessary in an emergency to protect the child because the child, sibling, or parent of the child is subjected to or threatened with mistreatment or abuse.
 - If there is no previous custody order and a child custody proceeding was not initiated in another state, then the temporary order will stay in effect until there is a custody determination made in an appropriate state.
 - If there is a previous custody order or custody proceeding initiated in another state, then the temporary custody order issued by the Ohio court shall specify in the order a period of time the court believes is adequate to allow the person seeking an order to obtain an order from the state having jurisdiction.
 - The temporary order is in effect until another order is issued; OR
 - Until the specified period of time expires.
 - The Ohio court must communicate with the other state court.
9. Proceedings pending in another state [R.C. 3127.20]
- An Ohio court may not exercise jurisdiction if, at the time of the commencement of the proceedings, a child custody proceeding

- concerning the same child is pending in a court of another state having similar jurisdiction, unless, the proceeding was stayed or terminated by the other state because Ohio is a more convenient forum.
- Before hearing a custody proceeding, an Ohio court must determine whether a child custody proceeding is pending in another state.
 - If another state, with similar jurisdiction as Ohio, has a pending child custody proceeding, then the Ohio court shall:
 - Stay its proceeding and communicate with the court of the other state.
 - If the courts do not determine that Ohio is a more appropriate forum, then the Ohio proceedings shall be dismissed.
 - If an Ohio court has a proceeding to modify a child custody determination, the Ohio court shall determine whether a proceeding to enforce the custody determination is pending in another state.
 - If an enforcement proceeding commenced in another state, then the Ohio court may do any of the following:
 - Stay the proceedings to modify the custody determination pending a ruling from the other state court enforcing, staying, denying, or dismissing the proceeding to enforce;
 - Enjoin the parties from continuing with the proceeding for enforcement;
 - Proceed with the modification under conditions the court considers appropriate when an emergency is demonstrated.

10. Inconvenient forum; more appropriate forum [R.C. 3127.21]

- An Ohio court that has jurisdiction to make a custody determination may decline to exercise its jurisdiction at any time if it determines it is an inconvenient forum under the circumstances and that a court of another state is a more convenient forum.
- The issue of inconvenient forum may be raised by:
 - Motion of a party;
 - The court's own motion;
 - At the request of another court.
- The Ohio court shall consider whether it is appropriate for a court of another state to exercise jurisdiction before determining that Ohio is an inconvenient forum.
 - The court shall allow the parties to submit information and shall consider all relevant factors, including:
 - Whether domestic violence has occurred and is likely to continue and which state could protect the parties and the child;
 - The length of time the child resided outside the state;
 - The distance between the Ohio court and the other state court that would assume jurisdiction;
 - The relative financial resources of the parties;
 - Any agreement of the parties as to which state should assume jurisdiction;
 - The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
 - The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence;

- The familiarity of the court of each state with the facts and issues in the pending litigation.

- If the Ohio court determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, then the Ohio court shall stay the proceedings upon condition that a child custody proceeding promptly commences in the other state court.
- The Ohio court may decline to exercise jurisdiction over the child custody proceeding incidental to a divorce, but still retain jurisdiction over the divorce.

11. Registration of out-of-state child custody determination [R.C. 3127.35]

- The clerk of a court with appropriate jurisdiction may register a child custody determination issued by a court of another state, with or without a simultaneous request for enforcement on receipt of all the following:
 - A letter or other document requesting the child custody determination be registered;
 - Two copies, including one certified copy, of the custody determination sought to be registered, and a statement under penalty of perjury, that the order was not modified to the best knowledge and belief of the person seeking registration;
 - The name and address of:
 - The person seeking registration;
 - Any parent who is designated the residential parent and legal custodian of the child or has parenting time with the child;
 - Any person acting as a parent who was awarded custody or visitation in the child custody determination.
 - An advanced deposit or fee requested by the court.

- Upon receipt of the documents required, the registering court shall:
 - Cause the child custody determination to be filed as a foreign judgment together with one copy of the accompanying documents; AND
 - Serve notice of the registration on the person named and provide them with an opportunity to contest the registration.
 - Notice required shall state all the following:
 - That the registered child custody determination is enforceable as of the date of the registration in the same manner as a child custody determination issued by this state;
 - That a hearing to contest the validity of the registered determination must be requested within 30 days after service of the notice; AND
 - That failure to contest the registration shall result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been raised.
 - Contesting the validity of the registered order:
 - Person shall request a hearing within 30 days after service of the notice.
 - The court shall confirm the validity of the registered order, unless the person contesting the registration establishes one of the following:
 - The issuing court did not have jurisdiction;
 - The child custody determination sought to be registered was vacated, stayed, or modified by a court having jurisdiction to do so;
 - The person contesting registration was entitled to notice of the child custody proceeding for which the registration is sought, but notice was not given.
 - If no request for a hearing to contest the validity of the order is made, then the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.
 - Confirmation of the registered custody determination, whether by operation of law or after notice and hearing, precludes further contest of the determination with respect to any matter that could have been asserted at the time of registration.
12. Enforcement of custody determination of a court of another state [\[R.C. 3127.36\]](#)
- Ohio courts shall recognize and enforce a child custody determination of a court of another state if the other state exercised jurisdiction in conformity with [R.C. Chapter 3127](#), and the determination was not modified.
 - The Ohio court may use any remedy available under laws of this state to enforce the out-of-state custody determination.
13. Communication between courts [\[R.C. 3127.37\]](#)
- If an Ohio court seeking to enforce an out-of-state custody determination determines that a proceeding to modify the custody determination is pending in a court of another state having jurisdiction to modify, then the Ohio court shall communicate immediately with the modifying court.
 - The enforcement proceeding shall continue, unless the enforcement court, after communication with the modifying court, stays or dismisses the proceedings.

14. Verification of enforcement orders [R.C. 3127.38]

- A petition for enforcement must be verified.
 - Attached to the petition must be all orders sought to be enforced and any order confirming registration.
 - The orders attached must be original or certified copies as required by the court.
 - The petition for enforcement must state:
 - Whether the court that issued the child custody order determined the jurisdictional basis it relied upon and, if so, what that jurisdictional basis was;
 - Whether the determination for which enforcement is sought was vacated, modified, or stayed by a court whose decision must be enforced;
 - Identify the court;
 - Identify the case number;
 - Identify the nature of the proceeding.
 - Whether any proceeding commenced that could affect the current proceedings, including:
 - Proceedings to enforce a custody determination;
 - Proceedings related to domestic violence or protection orders;
 - Proceedings to adjudicate the child as an abused, neglected, or dependent child;
 - Proceedings seeking termination of parental rights and adoptions:
 - Identify the court;
 - Identify the case number;
 - Identify the nature of the proceedings.
 - The present physical address of the child and the respondent, if known;
 - Whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from law enforcement officials;
 - If the child custody determination was registered and the date and place of registration was confirmed.
- Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter an order necessary to ensure the safety of the parties and the child.
 - If possible the court shall hold a hearing on the next judicial day after service of the order.
 - The order shall include the time and place of the hearing;
 - Advise the respondent that the court will order the petitioner to take immediate physical custody of the child at the time and place of the hearing;
 - That respondent pay fees, costs, and expenses;
 - May schedule a hearing to determine whether further relief is appropriate.
 - Unless the respondent appears and establishes either:
 - That the child custody determination was not registered and confirmed and one of the following apply:
 - The issuing court did not have jurisdiction;

- The child custody determination for which enforcement is sought was vacated, stayed, or modified by a court having appropriate jurisdiction;
- The respondent was entitled to notice of the child custody proceedings for which enforcement is sought, but notice was not given.
- That the child custody determination was registered and confirmed, but was vacated, stayed, or modified by a court having appropriate jurisdiction.

- The court's jurisdiction pursuant to the out-of-state custody determinations extends only to the modification or enforcement of parenting issues.
- The court's jurisdiction pursuant to out-of-state custody determinations does not include enforcing or modifying child support.

— UCCJEA Process Flow Charts Follow

REGISTRATION OF A FOREIGN ORDER

Is a Foreign
Child Custody Determination
Being Registered?
[R.C. 3127.35]

YES

ITEMS REQUIRED FOR REGISTRATION [R.C. 3127.35(A)]

A letter or other document requesting that the determination be registered.

Two copies (one certified) of the determination sought to be registered, and a statement under penalty of perjury that the order was not modified to the best knowledge and belief of the person seeking registration.

Name and address of the person seeking registration and any parent who is designated the residential parent and legal custodian of the child or to have parenting time with respect to the child or any person acting as a parent who was awarded custody or visitation in the child custody determination sought to be registered.

An advance deposit or fee established by the court.

UPON RECEIPT, CLERK OF COURTS SHALL:

- File the determination as a foreign judgment.
- Serve notice of the registration on the other party and provide them an opportunity to contest.

THE NOTICE MUST PROVIDE:

- The registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state.
- A hearing to contest the validity of the registered determination must be requested within 30 days after service of notice.
- Failure to contest the registration shall result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

PROPER ISSUES TO CONTEST

The issuing court did not have jurisdiction under [R.C. 3127.15](#) to [R.C. 3127.24](#) or a similar statute of another state.

The determination sought to be registered was vacated, stayed, or modified by a court having jurisdiction to do so under [R.C. 3127.15](#) to [R.C. 3127.24](#) or a similar statute of another state.

The person contesting registration was entitled to notice of the child custody proceeding for which registration is sought, but notice was not given in accordance with the standards of [R.C. 3127.07](#) or a similar statute of another state.

NO

Only child custody determinations
can be registered under R.C. Chapter 3127

Only out-of-state determinations
should be registered under R.C. Chapter 3127

IMPROPER ISSUES TO CONTEST

Contesting party does not like the determination.

Contesting party does not want the determination registered in Ohio.

CONFIRMATION

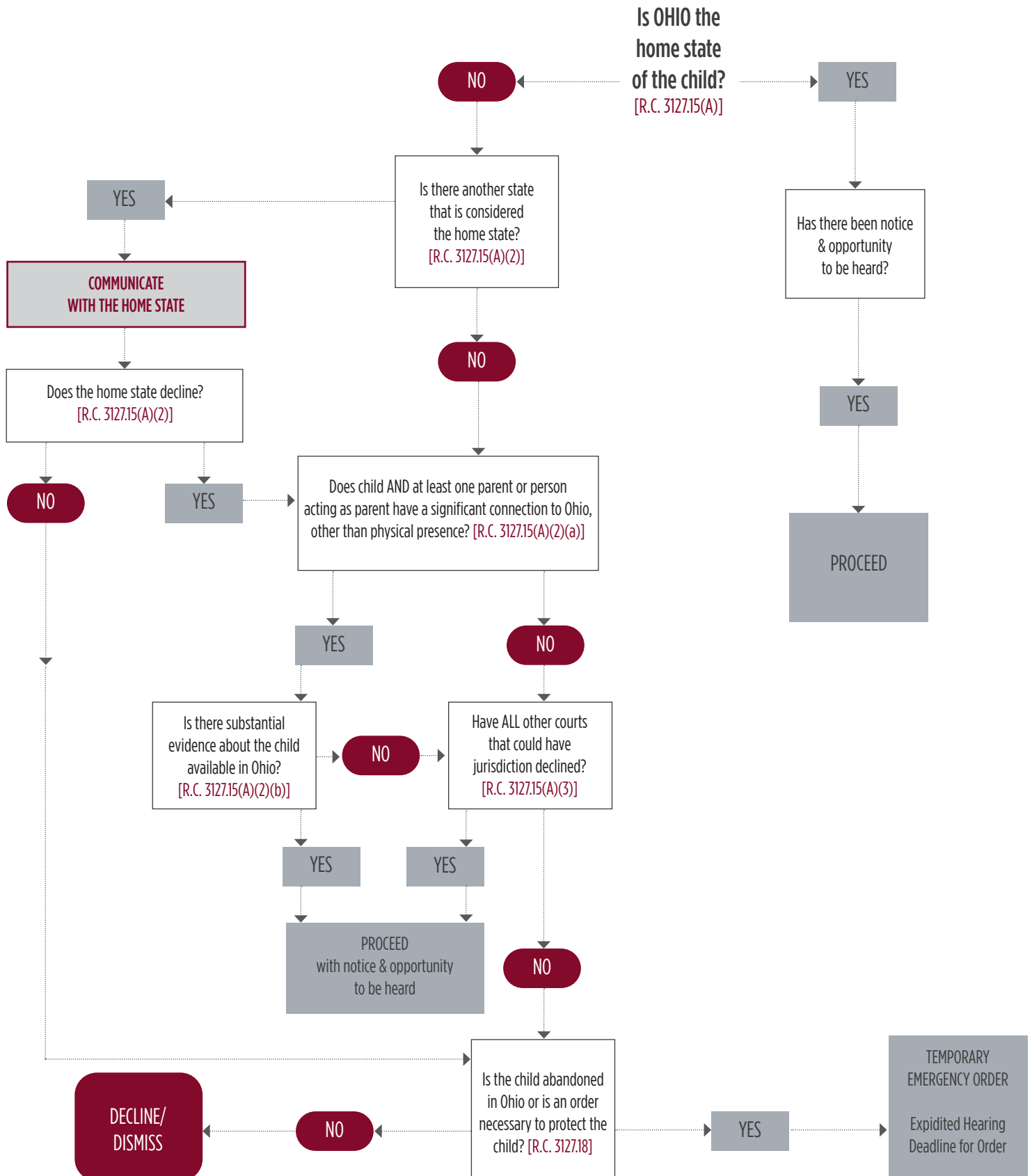
A timely request for hearing to contest registration was not made; the registration is confirmed as a matter of law.

Denial at a hearing to contest the registration.

Confirmation of a registered determination (by operation of law or after notice and hearing), precludes further contest of the determination with respect to any matter that could have been asserted at the time of registration.

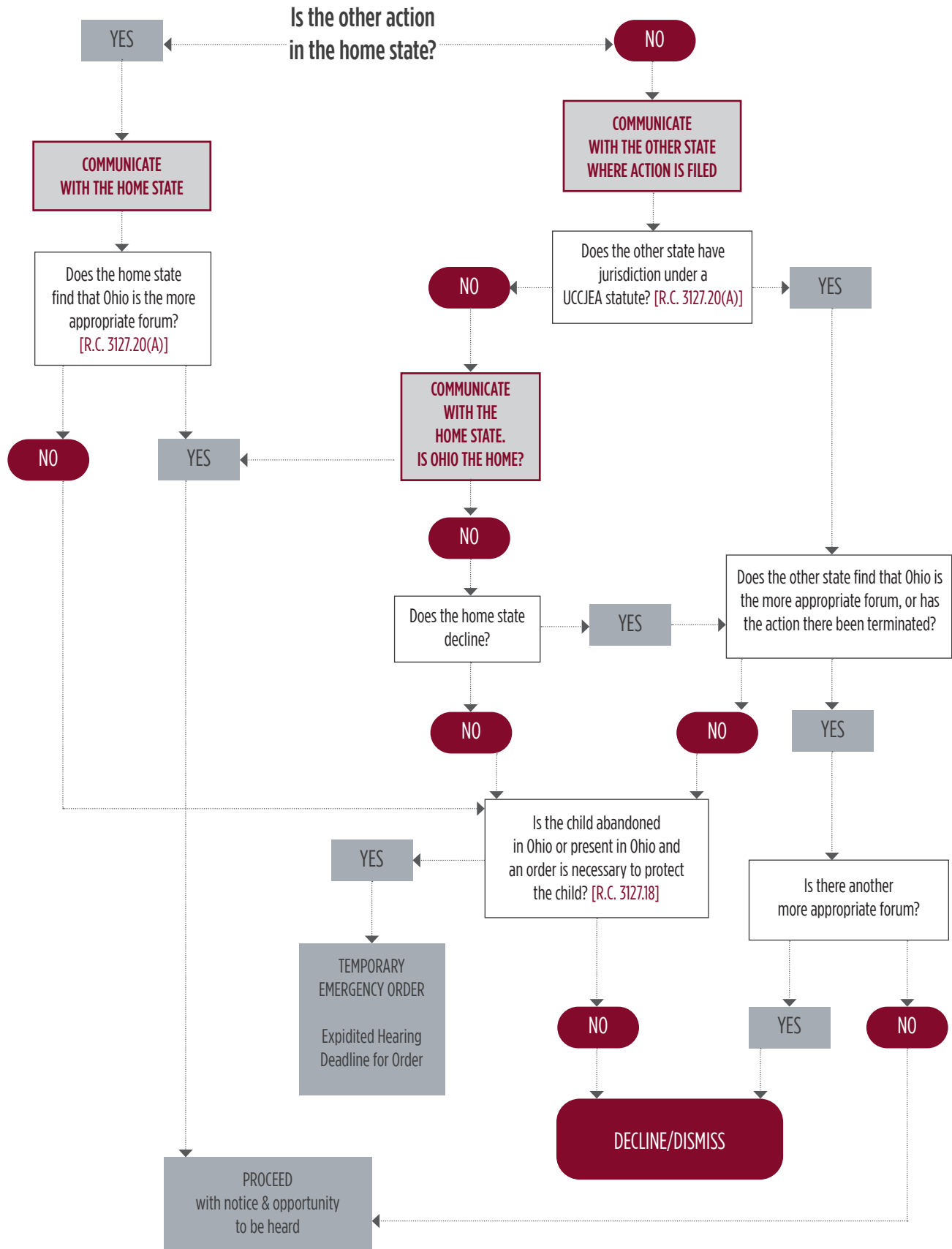
UCCJEA NEW ACTION

NO OTHER NEW PROCEEDINGS PENDING

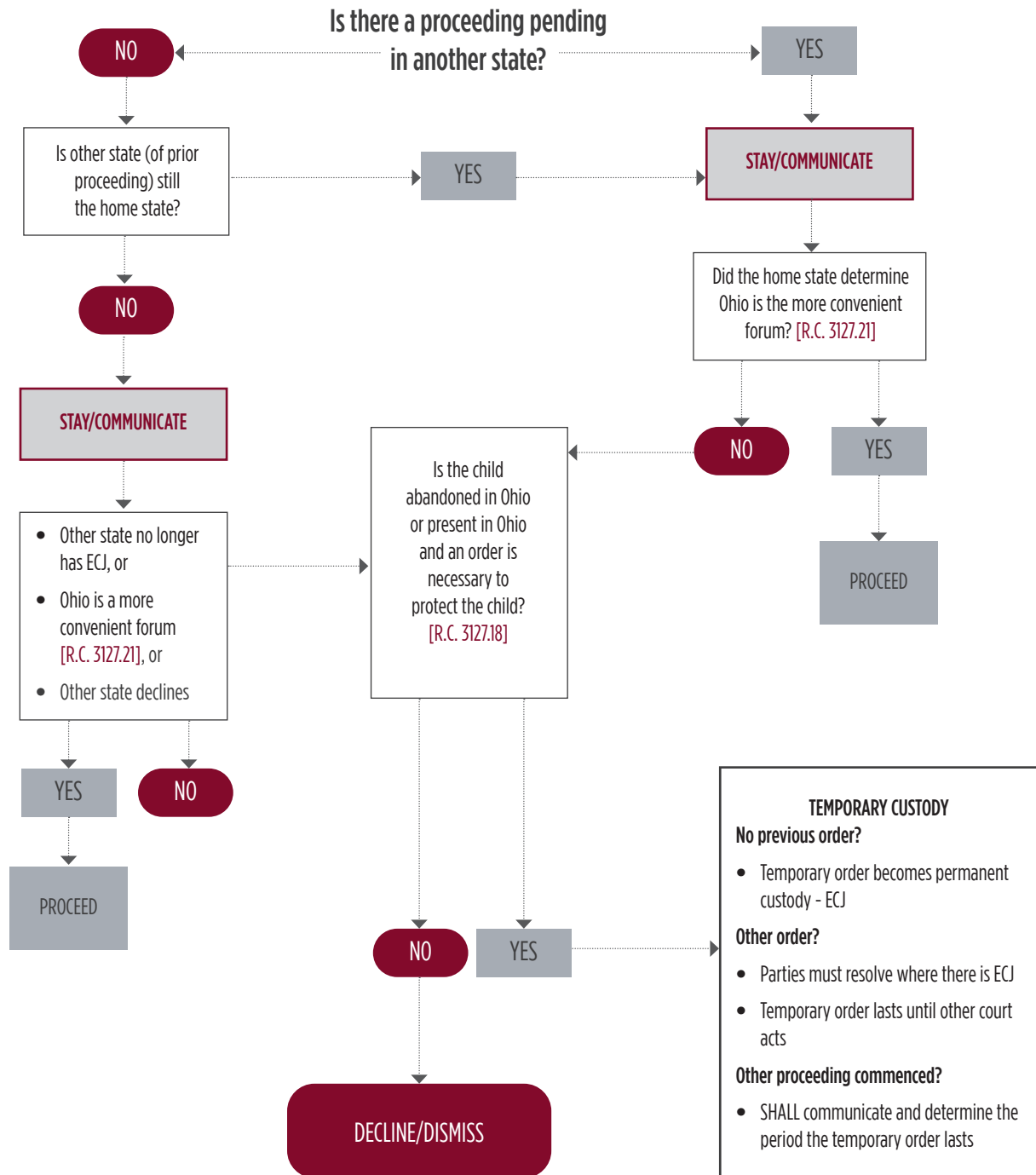


UCCJEA NEW ACTION

A NEW PROCEEDINGS PENDING IN ANOTHER STATE



UCCJEA MODIFICATION



ECJ = Exclusive Continuing Jurisdiction

DETERMINATION OF INCONVENIENT FORUM [R.C. 3127.21]

A court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. The court shall allow the submission of information and consider the relevant factors, including the following:

1. Whether domestic violence has occurred, whether it is likely to continue, and which state can best protect the parties and the child;
2. The length of time the child resided outside this state;
3. The distance between the court in this state and the court in the state that would assume jurisdiction;
4. The relative financial circumstances of the parties;
5. Any agreement of the parties as to which state should assume jurisdiction;
6. The nature and location of evidence required to resolve the pending litigation, including testimony of the child;
7. The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence;
8. The familiarity of the court of each state with facts and issues in the pending litigation.

UCCJEA ENFORCEMENT

