

New Judges  
Orientation Part II  
*Juvenile Track*

May 13-15, 2025

Thomas J. Moyer Ohio Judicial  
Center  
Columbus, OH



THE SUPREME COURT *of* OHIO  
JUDICIAL COLLEGE

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**New Judges Orientation: Part II - Juvenile Track**  
**May 13-15, 2025 – Thomas J. Moyer Ohio Judicial Center, Columbus**

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**AGENDA**

**TUESDAY, MAY 13**

- 1:00 Delinquency and Unruly**
- 2:30 Break**
- 2:45 Delinquency and Unruly, continued.**
- 4:15 Conclude**

**WEDNESDAY, MAY 14**

- 8:00 Travel to Ohio Department of Youth Services – Circleville Juvenile Correctional Facility Site Visit**
- 9:15 Ohio Department of Youth Services – Circleville Juvenile Correctional Facility Site Visit**
- 12:00 Travel to Supreme Court of Ohio and Lunch Break**
- 1:00 Traffic**
- 1:30 Breakout Groups**
- Small Court Group
  - Medium Court Group
  - Large Court Group
    - Administrative Duties
    - Engagement with other judges and court staff
    - Open Discussion: Questions, Challenges, Issues
- 2:45 Break**
- 3:00 Caseflow Management and Time Guidelines**
- 4:15 Conclude**

## **THURSDAY, MAY 15**

- 9:00 Abuse, Neglect, and Dependency**
- 10:30 Break
- 10:45 Child Support, Custody, and Parentage**
- 12:15 Lunch – Pick up lunch and reconvene for a working lunch
- 12:30 Leadership, Philosophy, and Professional Development of a Juvenile Court Judge**
- Community Outreach
  - Judicial Conduct
  - Other Judicial Considerations
- 1:45 Open Discussion – Questions, Challenges, etc.**
- Hypotheticals for discussion and review will be available to cover, if there is more time available than needed for questions and discussion.
- 2:30 Program Concludes

### **Faculty:**

Hon. David Hejmanowski, *Delaware County Court of Common Pleas, Probate and Juvenile Divisions*  
Hon. Frank Janik, *Lorain County Court of Common Pleas, Domestic Relations and Juvenile Divisions*  
Hon. Matthew P. Puskarich, *Harrison County Court of Common Pleas, Probate and Juvenile Divisions*

### **NOTE:**

Additional Judicial College courses are available online for self-study hours, please visit  
<https://www.supremecourt.ohio.gov/JudicialCollegePublicCalendar/#/online>

To register for a Judicial College course or to view upcoming course offerings, please visit  
<https://www.supremecourt.ohio.gov/JudicialCollegePublicCalendar/#/catchall>

## FACULTY BIOGRAPHIES

**DAVID A. HEJMANOWSKI** has served as the Judge of the Probate/Juvenile Division of the Delaware County Court of Common Pleas since February of 2015 and was previously a Magistrate at that Court from January of 2003 to February of 2015 and Juvenile Court Administrator from 2004-15. Prior to this, he served as an assistant prosecuting attorney for Delaware County. He graduated as a Public Service Fellow from the Ohio State University Moritz College of Law in 1999 where he also received the Joseph M. Harter Memorial Award for Trial Advocacy. He received his B.S. in political science from Hiram College in 1996. He is currently chair of the Supreme Court of Ohio's Advisory Committee on Interpreter Services and a member of the board of the Supreme Court's Judicial College. He is a past chair of the Ohio State Bar Association Juvenile Justice Committee and current chair of the Ohio State Bar Association's Content Advisory Committee. From 2008 to 2011 he served a three year term on the Ohio State Bar Association Board of Governors. During 2023 he is serving as President of the Ohio State Bar Foundation and President of the Delaware County Bar Foundation. In 2020 he began a ten-year term as an officer of the Ohio Judicial Conference. He is a member of the Governor's Council on Juvenile Justice. From 2019-2022 he served on the Federal Advisory Committee on Juvenile Justice, which advises Congress and the White House on juvenile justice policy matters. He is a member of the Boards of the National Council of Juvenile and Family Court Judges and the National Center for Juvenile Justice. He is a frequent presenter for the Ohio Judicial College and the Ohio State Bar Association. Locally, he serves as President of the Delaware County Historical Society and on the boards of the Central Ohio Symphony, the Strand Cultural Arts Society and the Arena Fair Theater Company.

**FRANK JANIK** was elected as Judge of the Lorain County Domestic Relations Court in 2012 and reelected in 2018. Before taking the bench, he practiced criminal and civil law for twenty-three years with the law firms of John Nemeth and Associates in Columbus practicing insurance defense and civil litigation, with Kenneth Rothgery and Associates in Elyria practicing personal injury and malpractice law, as a sole practitioner in Amherst practicing criminal defense and personal injury law, and as an assistant Lorain County Prosecutor prosecuting major felony crimes. Janik also served as Councilperson at Large in Amherst and taught law classes at the Lorain County Community College. Judge Janik currently serves as President of the Ohio Association of Juvenile Court Judges. He has been appointed by the Chief Justice of the Supreme Court to serve on the Advisory Committee on Children and Families and currently serves on the Juvenile Justice Subcommittee, the Family Law Reform Subcommittee, the Juvenile Law and Procedure Committee, the Education Committee for the Ohio Judicial Conference, and the Executive Committee of the Ohio Judicial Conference. Janik has also been invited by the Supreme Court to assist in teaching newly elected or appointed judges at New Judges Orientation and has been a presenter at judicial seminars hosted by the Ohio Judicial Conference. He has presided over all three specialized courts in the Lorain County Juvenile Court including the Juvenile Drug Court, the Family Drug Court, and the Mental Health

Court, and has served as Administrative Judge. Judge Janik graduated magna cum laude from Kent State University obtaining a Bachelor of Arts Degree in English and Political Science, and graduated with honors from the Ohio State University Moritz College of Law.

**MATTHEW P. PUSKARICH** has been the Harrison County Probate/Juvenile Judge since February 2003. Prior to taking the bench, he was the Harrison County Prosecuting Attorney for six years and a former Jefferson County Assistant Prosecuting Attorney. Judge Puskarich serves on the Supreme Court's Advisory Committee on Children, Families and the Courts and currently chairs one subcommittee. For the Ohio Judicial Conference, he serves on the Committee for Judicial Ethics and Professionalism, the Juvenile Law and Procedure Committee, the Public Confidence and Community Outreach Committee and teaches at New Judges Training for Juvenile and Probate Judges. He is also a Past President of the Ohio Association of Juvenile Court Judges. Judge Puskarich is an Otterbein University graduate (1988) and received his law degree (1991) from the Wake Forest University School of Law. He is happily married and the father of two sons. His wife, Kris, is a member and past chairperson of the Supreme Court's Judicial Family Network.

## Judicial Resources

<b>Supreme Court of Ohio</b> <a href="http://supremecourt.ohio.gov">supremecourt.ohio.gov</a>	
<b>Services to Courts</b> <ul style="list-style-type: none"> <li>• <a href="#">Bench Cards, Guides &amp; Toolkits</a></li> <li>• <a href="#">BCI &amp; NICS Reporting Requirements</a></li> <li>• <a href="#">Case Management</a>, including                             <ul style="list-style-type: none"> <li>○ Resources,</li> <li>○ <a href="#">Case Inquiry Form</a>, and</li> <li>○ <a href="#">Statistical Reporting</a></li> <li>○ <a href="#">Case Inquiry Form</a></li> </ul> </li> <li>• <a href="#">Dispute Resolution</a></li> <li>• <a href="#">Domestic Violence Program</a></li> <li>• <a href="#">Language Services</a></li> <li>• <a href="#">Judicial Assignment Program</a> and <a href="#">Igor</a></li> </ul>	<b>Judicial College</b> <ul style="list-style-type: none"> <li>• <a href="#">Website</a>, including links to:                             <ul style="list-style-type: none"> <li>○ <a href="#">Calendar</a></li> <li>○ <a href="#">OhioCourtEDU</a></li> </ul> </li> </ul>
	<b>Miscellaneous</b> <ul style="list-style-type: none"> <li>• <a href="#">Opinion Search</a></li> <li>• <a href="#">Ohio Rules of Court</a> <ul style="list-style-type: none"> <li>○ <a href="#">Proposed Rule Amendments</a></li> </ul> </li> <li>• <a href="#">Forms</a></li> <li>• <a href="#">Judicial Liability Insurance</a></li> <li>• <a href="#">Ohio Courts Network</a></li> <li>• <a href="#">Writing Manual</a></li> </ul>
<b>Ohio Judicial Conference</b> <a href="https://www.ohiojudges.org">https://www.ohiojudges.org</a>	
<ul style="list-style-type: none"> <li>• <a href="#">Tools &amp; Bench Aids</a>. Includes                             <ul style="list-style-type: none"> <li>• Traffic charts and handbooks.</li> <li>• Offense Lists</li> <li>• <a href="#">Criminal Bench Book</a> (Common Pleas)</li> <li>• <a href="#">Duty to Fingerprint</a>,                                     <ul style="list-style-type: none"> <li>○ see BCI &amp; NICS Reporting, above.</li> </ul> </li> <li>• Sealing and Expungement charts</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <a href="#">Publications</a></li> <li>• <a href="#">Recent Jury Instructions (OJI)</a></li> <li>• <a href="#">Judges Resource Manual</a></li> <li>• <a href="#">Judicial Associations</a></li> <li>• Legislative                             <ul style="list-style-type: none"> <li>• <a href="#">Enactment Summaries</a></li> <li>• <a href="#">Bills that Impact the Judiciary</a></li> </ul> </li> </ul>
<b>Ohio Board of Professional Conduct</b> <a href="http://bpc.ohio.gov">bpc.ohio.gov</a>	
<ul style="list-style-type: none"> <li>• <a href="#">Financial Disclosure</a></li> <li>• <a href="#">Judicial Candidates</a></li> </ul>	<ul style="list-style-type: none"> <li>• <a href="#">Advisory Opinions</a></li> <li>• <a href="#">Judicial Ethics Guides</a></li> </ul>
<b>National Organizations</b>	
<ul style="list-style-type: none"> <li>• <a href="#">National Center for State Courts (NCSC)</a> <ul style="list-style-type: none"> <li>○ <a href="#">Consulting &amp; Research Areas of Expertise</a>.</li> <li>○ <a href="#">Education &amp; Careers</a>.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <a href="#">National Judicial College (NJC)</a> <ul style="list-style-type: none"> <li>○ <a href="#">Course Catalog</a></li> <li>○ <a href="#">Resources</a></li> </ul> </li> </ul>
<b>Publications</b>	
<ul style="list-style-type: none"> <li>• <a href="#">Judicature</a> (Duke Law School)</li> <li>• <a href="#">The Judges' Journal</a> (ABA)</li> </ul>	<ul style="list-style-type: none"> <li>• <a href="#">Court Review</a> (American Judges Assoc.)</li> </ul>



## THE SUPREME COURT *of* OHIO COURT SERVICES

### **Online Resources: Common Pleas, Juvenile Division**

These resources can be found on the Supreme Court's Website [Resources for the Bench](#). Any questions contact [Officeofcourtservice@sc.ohio.gov](mailto:Officeofcourtservice@sc.ohio.gov) or 614-387-9400.

#### [A Guide for Court Managers](#) (2022) (online)

This is a link to online resources designed to assist new court managers as a starting point to identify issues and resources designed to help with the day-to-day operations of the court. The guide includes basic information about Ohio courts and court governance, and court-related rules and reports. The guide also provides information on administrative and operational functions of a court and specific topics related to the different jurisdictions of the individual courts. Featured are a statutory court reporting chart by jurisdiction and Advisory Opinions of the Ohio Board of Professional Conduct, Ohio Attorney General Opinions, American Bar Association Opinions, and Supreme Court of Ohio Opinions that may impact courts.

#### [A Judicial Guide to Conducting Remote Hearings](#) (2022)

This guide provides information and guidance to assist courts in conducting hearings remotely. It includes minimum requirements for conducting remote hearings, tips for selecting a conferencing platform, and sample scripts for judicial officers. The guide highlights special considerations for important issues such as accessibility, attorney-client communications, and participant instructions.

#### [Access to Justice Resources](#)

This is a one-page informational flyer that contains a QR code to provide resources for legal help including forms, information on protection orders, sealing and expungement, and interpreters.

#### [Appointment & Credentialing of Foreign Language Interpreters](#) (2022)

This guide outlines requirements for appointing foreign language interpreters and the rules surrounding use of interpreters. The guide provides information about interpreter credentials and how to conduct voir dire to determine interpreter qualifications. The guide also provides tips for facilitating communication in an interpreted proceeding.

#### [Assessing Allegations of Domestic Violence in Child Abuse Cases](#) (2016)

This document provides resources for courts in assessing allegations of domestic violence in child abuse cases.

#### [Bridges Program Toolkit](#) (2019)

This toolkit provides recommendations and tips for engaging with emancipated youth in court to provide a successful transition of young adults to independence. The toolkit outlines applicable state and federal laws and provides sample court forms and entries.

#### [Caregiver Notice and Right to be Heard Toolkit](#) (2019)

This toolkit is designed to provide an overview of the recommendations and best practices that courts may use to provide caregivers with notice and an opportunity to be heard at all hearings.

The toolkit provides the rationale behind the recommendations and further resources for the court's reference.

#### [Child Protection Mediation Toolkit](#) (2021)

This planning toolkit was designed as a guide to help courts and communities assess their current approaches to child protection cases and develop or enhance their use of Child Protection Mediation (CPM). The toolkit is a framework to guide planning and implementation activities.

#### [Child Welfare Attorneys: A Toolkit for Quality Legal Representation](#) (2023)

This toolkit provides practical suggestions for recruiting and retaining a competent, committed pool of attorneys. The toolkit includes several resources such as forms, information about local case plan services, typical case timelines, and background information about child protection cases.

#### [Collection of Fines and Fees in Juvenile Court](#) (2018)

This guide provides information about imposing appropriate fines, costs, and other financial sanctions upon youth involved in the juvenile justice system. The guide emphasizes a juvenile's presumed inability to pay fines and fees and addresses other considerations such as restitution, diversion, and community service.

#### [Custody Evaluations Toolkit for Judicial Use](#) (2023)

This toolkit provides an explanation of what a custody evaluation is and how it differs from other types of court-ordered investigations. It also describes factors to consider when ordering a custody evaluation, the court's responsibilities when appointing a custody evaluator, and sample documents.

#### [Dependency Docket Bench Cards for Ohio Juvenile and Family Court Judges and Magistrates](#) (2015)

These bench cards support judicial officers in their duty to provide comprehensive and timely judicial action in child welfare cases and to encourage best practices. The bench cards provide information on hearing procedures, necessary findings, caseload timelines, and special considerations such as the Indian Child Welfare Act, interstate issues, and when to appropriately consult with the youth throughout the proceedings. The bench cards include resources from the initial filing through post-dispositional review hearings.

#### [Desktop Guide for Juvenile Court Clerks](#) (2018)

This guide provides a general overview of the state laws, rules, and practices of which juvenile clerks should be aware. This manual was created with the input and review of clerks and judicial officers across the state and includes sample forms and charts.

#### [Developing an Effective School Attendance Program](#) (2023)

This toolkit provides resources for Ohio juvenile courts and local school districts to develop an effective school attendance program to better engage with students and families, identify barriers, and prevent youth from entering the juvenile justice system because of their failure to attend school.

#### [Domestic Violence & Firearms Prohibition](#) (2017)

This guide addresses a court's duty to provide notice to offenders regarding possible firearms disability under the Gun Control Act, 18 U.S.C. Section 922(g). The guide explains how the federal

requirements are applied to Ohio courts, including what is considered a qualifying protection order, and general implications for courts.

#### [Domestic Violence in Later Life](#) (2009)

This guide outlines the unique markers of domestic violence involving older individuals. The guide provides examples of how domestic violence in later life differs from other abusive relationships, with special attention to the court's role in addressing these cases.

#### [Ensuring the Right to be Heard: Procedural Fairness for Self-Represented Litigants](#) (Rev. 2025)

This resource outlines the duties surrounding a court's ethical obligation to provide access to justice to all who use the court system. The resource provides tips for ensuring procedural fairness for self-represented litigants, including best practices, and referral information.

#### [Government Conflict Resolution Services](#)

This resource details the services offered by the Government Conflict Resolution Services, which is a program designed to resolve and prevent conflict among public officials on various matters such as budget issues, public records requests, and other organizational issues, without court involvement. The services offered include neutral evaluation, mediation, and facilitation.

#### [Government Conflict Resolution Services Process](#)

This resource details the process for engaging with the Government Conflict Resolution Services.

#### [Guide to Firearms Return in Domestic Violence Cases](#) (2016)

This guide addresses both temporary and permanent firearms prohibitions pursuant to federal and state laws, and those circumstances under which a court may return firearms and ammunition, or grant relief from firearms disability.

#### [Judicial Assignment Program Overview](#) (2025)

This guide provides an overview of the process by which the Chief Justice may make temporary assignments of sitting and retired judges. The guide outlines the standards and expectations in implementing the judicial assignment program.

#### [Judicial Guide to Guardian ad Litem Programs](#) (2023)

This guide assists in implementing rule requirements under Sup.R. 48, identifying best practices for recruiting, retaining, and increasing the accountability of *guardian ad litem*s. These best practices are aimed at improving *guardian ad litem* performance, leading to better outcomes for Ohio's children and families.

#### [Juvenile Court Trauma-Informed Practices](#) (2017)

This guide includes information to assist courts in addressing trauma in children. The guide provides questions designed to guide a court's inquiry into the facts surrounding a child's trauma and how these influence the court's proceedings. The guide also addresses strategies for trauma-informed courts and how to address parents who have also been impacted by childhood trauma.

#### [Juvenile Diversion Toolkit](#) (2021)

This toolkit offers common statewide definitions of diversion for courts to consider and implement. The toolkit includes information about opportunities for diversion, sample intervention strategies,



and tips for determining the types of interventions that will best meet the needs of the target population.

[Juvenile Human Trafficking, Ohio Laws & Safe Harbor Response](#) (2017)

This guide outlines several “red flags” to help identify juvenile trafficking victims. The guide provides relevant laws and resources as well as examples for court responses to trafficking of juveniles.

[Juvenile Justice Bench Cards](#) (Rev. 2024)

These bench cards support judicial officers in hearing juvenile delinquency and unruly cases and provide best practices for courts working with youth involved in the juvenile justice system. Informational topics include detention, diversion, juvenile delinquency, truancy, unruly youth, and youth in adult court.

[Language Services in Case or Court Function and Ancillary Court Services](#) (2022)

This guide addresses the appointment of foreign language interpreters in court proceedings, including when to make an appointment, how to address linguistic and dialectal differences, and facilitating communication in an interpreted proceeding. The guide also provides sample language for providing instructions to parties, witnesses, and the jury.

[Limited Scope Representation](#) (LSR) (2023) (online)

This online resource provides assistance for courts, attorneys and the public for the “unbundling of legal services.” LSR/unbundling allows a lawyer to limit the scope of legal services provided to a client, either in or out of court (i.e., the lawyer may represent a client in court for a limited complex portion of a case, or the lawyer may just prepare or review legal documents, pleadings, or forms). This allows clients to gain access to legal services they would not otherwise have been able to afford.

[NCIC Mental Health Notice](#) (2014)

Sup.R. 95 and Form 95: NCIC (National Criminal Information Center) Mental Health Notice are to be used upon issuance, modification or termination of a court order when a person has pled guilty to or was convicted of an offense of violence and ordered either to receive a mental health evaluation or treatment for mental illness, or approving a conditional release of a person who was either found not guilty by reason of insanity or incompetent to stand trial with no substantial probability of becoming competent again even with a course of treatment.

[Neutral Evaluation Toolkit](#) (2024)

This toolkit provides resources for courts seeking to use neutral evaluation by providing information to assist courts in adopting a local rule and implementing a neutral evaluation program. The toolkit includes information surrounding court responsibilities, best practices, and sample documents and forms.

[Non-Fatal Strangulation/Suffocation: Four Common Myths](#) (2025)

This guide highlights common misconceptions about non-fatal strangulation, such as that nonfatal strangulation always results in visible injuries, or that if a victim can speak, they are not being strangled. The guide also explains the physiological consequences and how quickly restriction of air or bloodflow to the brain results in unconsciousness and death.

#### [Non-Fatal Strangulation/Suffocation: What Every Judge Should Know](#) (2025)

This guide highlights the strangulation statute, the physiological consequences and potential lethality posed by strangulation, the signs and symptoms, how resulting brain injury might affect one's ability to access court systems, and when courts might encounter strangulation in their cases.

#### [Pathway Approach for Civil Cases](#) (2020)

This is a case management resource that outlines the pathway approach, which involves assigning appropriate time and resources to cases based on need. The guide outlines three pathways for case management, including streamlined, complex, and general.

#### [Planning for Parenting Time: Ohio's Guide for Parents Living Apart](#) (2012)

This guide is designed to help parents design a parenting time schedule that works best for their circumstances. The guide provides information designed to assist parents come to an agreement and includes several sample schedules based on age and development. The guide also addresses several special considerations, including blended families, incarcerated parents, high conflict families, and military families.

#### [Principles for the Use of Medication for Addiction Treatment \(MAT\) in Community Control, Probation, and Supervision](#) (2024)

This resource addresses the use of medication for addiction treatment as part of community control, probation, and supervision. The bench card highlights the important role that probation or community control officers have in the process by emphasizing the importance of cross-system training, understanding collateral consequences, and reducing recidivism.

#### [Pro Hac Vice Admission](#) (2024)

This bench card outlines pro hac vice registration requirements and details the overall process. The bench card also provides a step-by-step guide for local tribunals handling an out-of-state attorney's request to appear pro hac vice.

#### [Protection Orders Overview Card](#) (2019)

This chart outlines the different types of protection orders available under Ohio law. Information includes for each type of order, citations detailing the protected parties, the jurisdiction and standard of proof required, other details about the process including the length of the order, and the objections and violations process.

#### [Protection Orders: Statutes & Rules Reference Chart](#) (2019)

This chart provides an overview of statutes, rules, and process for each type of Ohio protection order.

#### [Qualified Residential Treatment Program \(QRTP\) Level of Care](#) (2021)

This toolkit provides guidance for conducting the required QRTP hearings. The toolkit explains how QRTP hearings fit into Ohio's child welfare system, including recommended adjustments to existing hearings processes, relevant state and federal law, and sample court forms.

#### [Quality Hearing Toolkit for Judicial Use](#) (2021)

This toolkit provides resources to help judicial officers engage parents and children in the child welfare court process. The toolkit highlights that the more engaged the parents are in the process and the hearings, the higher the rate of reunification and the timelier the achievement of permanency.

#### [Quick Reference Guide: Understanding BCI Reporting](#) (2024)

This guide outlines the roles that courts and court clerks play in the criminal background check process. The guide highlights the duty to fingerprint, including best practices for doing so, and reporting requirements for certain dispositions.

#### [Retired Chief Justice's Guidance on Fines, Fees, and Bail](#) (2018) (online)

This letter, written by retired Chief Justice O'Connor, reminds state courts of their ongoing constitutional obligation to implement and practice proper fine and cost collection methods.

#### [Strategies for Addressing a Backlog of Hearings: Tips for Ohio Courts](#) (Rev. 2025)

This guide outlines several methods that courts can implement to help address a backlog of hearings. The guide highlights practices such as implementing alternative dispute resolutions, running extra dockets, and appropriate staffing.

#### [Technology Plan Guidance for Local Courts](#) (2022)

This guide provides information and instructions for courts to develop a technology plan, as required by Superintendence Rule 5. The guide provides templates, sample plans, and sample local rules to help courts implement technology-based solutions and procedures.

#### [Understanding BCI Reporting](#) (2024)

This guide provides an overview of the reporting process in Ohio, illustrating how criminal information flows from local entities to the federal government. It also discusses best practices for judges and clerks of court on how to perform statutory reporting requirements, with an emphasis on ensuring fingerprint data has been captured and paired with the court's dispositional information. The appendix contains sample orders and other forms relevant to the reporting process.

#### [Understanding Marsy's Law Judicial Guide to Protecting the Rights of Crime Victims](#) (2024)

This resource is designed to help courts understand the rights conferred to crime victims and to describe the processes law enforcement agencies, prosecutors, clerks, and courts must follow to ensure the rights of victims are upheld.

#### [Understanding Marsy's Law Quick Reference Guide for Judges](#) (2024)

This quick guide outlines procedures for criminal justice entities to ensure victims' rights are protected from the time law enforcement makes its initial contact with the victim through prosecution, sentencing or disposition, and any post-conviction proceedings.

#### [Veterans Services Poster](#)

This poster briefly outlines some benefits that veterans might qualify for if in need of legal assistance.

#### [Victims Rights Poster](#) (2018)

This poster briefly outlines victims' rights, including how or through whom a victim may assert their rights.

#### [Video Remote Interpreting \(VRI\) in Ohio Courts](#) (2022)

This resource provides guidance and recommendations for handling remote matters that involve interpreters. The guide includes sample scripts and best practice guidelines.

#### [Working With Interpreters for Deaf & Hard of Hearing Persons in the Courts](#) (2022)

This guide provides information for handling court matters involving deaf or hard of hearing individuals. It outlines the relevant rules and addresses the variable nature of communicating with this community.

[Working With Telephonic Interpretation Services in Courts](#) (2021)

This resource provides information for judicial officers handling a hearing with a telephonic interpreting service. The guide provides some helpful tips for preparing for the hearing, how to address potential issues during a hearing, and sample language for the interpreter's oath.

[Youth Engagement in Court Proceedings Toolkit](#)

This toolkit is designed to provide an overview of the recommendations and best practices that courts may use to engage children in hearings. The toolkit provides research and legislation, behind the recommendations, including a tip sheet for youth, to help them become familiar with the court process and let them know how they may be able to participate.

# **Abuse/Neglect/Dependency**



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[illegible]



## **Abuse, Neglect and Dependency**

### **Educational Content:**

#### **I. Purpose, Statutory Definitions, and Procedural Elements of Key Hearings**

- A. Common issues present in abuse, neglect and dependency hearings:
  - 1. Relevant statutes, rules, & case law such as, but not limited to the following:
    - a. Definitions of abuse (R.C. 2151.031), neglect (R.C. 2151.03), and dependency (R.C. 2151.04) are statutory
    - b. Juv.R. 4(A), Juv.R. 6, Juv.R. 7, and Juv.R. 13 govern appointment of counsel, taking children into custody and emergency and temporary orders
    - c. Right to counsel is also covered by (R.C. 2151.52)
    - d. Orders of disposition—abuse, neglected or dependent child are outlined in R.C. 2151.353
    - e. Orders of permanent custody are governed by R.C. 2151.353, and R.C. 2151.414
    - f. Ohio Administrative Code sections control actions of child protective services agencies
    - g. Influential federal laws include:
      - i. Indian Child Welfare Act (ICWA)—inquiry as to whether child or parents may be of Native American Heritage (25 U.S.C. §§ 1903, 1912, 1922) and service on tribe is required;
      - ii. Veterans and active military laws (Service Members Civil Relief Act (SCRA) 50 U.S.C. §§ 3901-4043 )
      - iii. Scattered sections of 42 U.S.C.:
        - (1) Child Abuse Prevention & Treatment Act (CAPTA) (42 U.S.C. §§ 5101 et. seq.)
        - (2) Adoption & Safe Families Act (ASFA)
        - (3) Adoption Assistance and Child Welfare Act
        - (4) Multi-ethnic Placement Act (MEPA)
        - (5) Title IV-E Requirements (42 U.S.C. § 672)
        - (6) Fostering Connections to Success Act 2008 (P.L. 110-351)
      - iv. Interstate Compact on the Placement of Children (ICPC) and Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)
    - h. Guardian ad litem/CASA report and role and provided for in Sup.R. 48 and R.C. 2151.281(G)
    - i. Title IV-E requirements (42 U.S.C. § 672)
    - j. Specific statutes include: R.C. 2151.353, R.C. 2151.42, R.C. 2151.35, R.C. 2151.414, R.C. 2151.415, R.C. 2151.416, R.C. 2151.412, R.C. 2151.419 and 42 U.S.C. § 675, R.C. 2151.3515
- B. Initial Actions
  - 1. Procedural Issues
    - a. Complaint basics
      - i. Who can file? When it is filed?
      - ii. Does document meet requirements of body of the complaint?
      - iii. Additional motions (e.g., motion for emergency custody, interim orders)

- b. Ex parte hearings (Juv.R. 6) and emergency orders, with or without complaint
    - i. Purpose of hearing is to make immediate, interim orders
    - ii. Notice requirements
    - iii. Hearing procedural issues
    - iv. Findings - must meet standards and be reduced to writing
    - v. What are the standards for ex parte orders of emergency temporary custody and orders for access? (Juv.R. 6)
  - c. Shelter Care/Preliminary Protective Hearing
    - i. Purpose of hearing is to make interim orders and determine probable cause
    - ii. Complaint must meet statutory standards
    - iii. Issues
      - (1) Advise parents of their rights
      - (2) Review steps from testimony through hearing
      - (3) Formal hearing requirements: notice, time frames, service of the complaint
      - (4) Comply with all state and federal statutes
    - iv. Make all pertinent individuals a party -- Appointments
      - (1) Appoint counsel; who is entitled? What if a party indicates that they will hire their own lawyer? What if paternity has not been established? Who needs separate counsel? What if the parent is a minor?
      - (2) Determine if appointment of guardian ad litem/CASA and/or counsel for the child is necessary? Role is defined in rule and statute as is the procedure if there is a conflict in the roles
      - (3) Putative Father Registry
    - v. Findings
      - (1) Required findings
      - (2) Decision about child being returned (probable cause) to parent(s)/legal custodian, search for non-custodial parent
      - (3) Determination of which school district responsible for educational costs- must be made at time of removal
  - d. Temporary orders
    - i. Child support (Juv.R. 13); what documentation is required?
    - ii. Assessments, visitation should be ordered early
    - iii. Paternity of father if at issue
    - iv. Placement with relatives/non-relatives
  - e. Determination of jurisdiction: Interplay between domestic relations, juvenile, probate, general division and municipal jurisdictions (e.g., criminal domestic violence)
  - f. Title IV-E reasonable efforts finding must be made at removal and cannot be rectified later if left off
2. Case flow management and time frames
- a. Compliance with statutory timeframes – include distinction between what counsel can and cannot waive
  - b. Scheduling hearing dates and dealing with requests for continuances
    - i. Consider technique of frontloading the system
    - ii. Follow best practices in scheduling and innovative scheduling solutions
-

3. Other considerations
    - a. Confidentiality of Children Services records, who is entitled/allowed to have access, and any other public records access issues
    - b. Possible Pre-trial issues
      - i. Mediation referral
      - ii. Knowledge of local rules, procedures and available alternative dispute resolution options
      - iii. When are pre-trials scheduled?
      - iv. Indigent cost limitations (e.g., expert witnesses, etc.)
    - c. Identify any parties with veterans and active military status
    - d. Stay current on evolving law
    - e. Variations of procedures per county/judge within statutory guidelines
  - C. Adjudicatory Hearing
    1. Procedural issues
      - a. Define purpose of hearing
      - b. Notice to all parties
      - c. Service of process; publications/posting—due diligence in locating (e.g., filing affidavit)
      - d. Ensure appointments are made (e.g., guardian ad litem/CASA, counsel) and advise unrepresented party of right to counsel
      - e. Acceptance of admissions/stipulations (or conduct evidentiary hearing)
      - f. Competency of parties (e.g., competency hearings with children under 10 years) and consider if parent made also need guardian ad litem
      - g. Determine if case plan has been properly filed
      - h. Upon adjudication, explore possibility of agreed disposition
    2. Findings
      - a. Make a finding by clear and convincing evidence or dismiss complaint
      - b. Make finding of reasonable efforts (if removal) and best interests
      - c. Temporary orders (e.g., supervised visitation, counseling) should be clearly listed in orders
      - d. Judge communicates decision and explains ruling to be understood by parents/custodian and encourages them to a good result
    3. Other considerations
      - a. Working with media in high profile case
      - b. Cultural and ethnicity considerations
      - c. Orders from other courts (e.g. support orders, CPOs)
      - d. Child protection mediation as alternative (pre-adjudication, post-adjudication, and when motion for permanent custody filed)
  - D. Dispositional Hearing
    1. Procedural issues
      - a. Purpose of hearing is determine all dispositional orders and adopt case plan
      - b. Notice (Juv.R. 13(E)) provided to all parties
      - c. Appointment of counsel
      - d. Know specific service requirements for
        - i. Order for permanent custody
        - ii. Temporary custody
        - iii. Planned permanent living arrangement
      - e. Procedure
-

- i. Rules of evidence are relaxed (exception: permanent custody proceedings)
      - ii. Apply applicable burden of proof
      - iii. Review status of interveners or status of other persons
    - f. Findings
      - i. Selecting dispositional alternatives
      - ii. Make temporary or final orders or close case
      - iii. Reasonable efforts determination must be made at each hearing
    - g. Guardian ad litem reports should be filed in compliance with Sup.R. 48
  - 2. Other considerations
    - a. Confidentiality of Children Services records, who is entitled/allowed to have access
    - b. Stay current on evolving law
    - c. Consider appropriateness of no contact orders and be familiar with no contact orders that may be in place from other courts
    - d. Establishing guardianship/legal custody
    - e. Order reunification services for incarcerated or institutionalized parents or determine that reunification is not possible
    - f. Child protection mediation as alternative
- E. Permanent Custody Hearing
- 1. Procedural issues
    - a. Purpose of hearing to possibly terminate parental rights forever
    - b. Notice (Juv.R. 4; R.C. 2151.414(A)(1)) must be provided to all parties
    - c. Appointment of counsel (including child) (R.C. 2151.352; Juv.R. 4(A) and 7(F)(2))
    - d. Conflict (attorney/guardian ad litem) such as discussion of dual roles; new guardian ad litem (R.C. 2151.281(H); Juv.R. 4(C)(2))
    - e. Service
      - i. All parties and guardian ad litem (R.C. 2151.24; Juv.R. 16 & Juv. R. 20)
      - ii. Inability to locate parents (R.C. 2151.413(B)) may require service by publication
      - iii. Unrepresented parties; Advise of right to counsel at all stages (R.C. 2151.35(B))
    - f. Procedure
      - i. Rules of evidence apply strictly (Juv.R. 34(I))
      - ii. Apply applicable burden of proof (clear & convincing) (R.C. 2151.414(B) & (E))
      - iii. Consider competing motions (legal custody to a relative)
    - g. Ensure that guardian ad litem report is in compliance (Sup.R. 48 and R.C. 2151.414(C))
    - h. Concurrent planning for reunification should be considered
    - i. Findings
      - i. Statutory requirements (R.C. 2151.414)
      - ii. Grant or deny motion in writing and within seven days of hearing
      - iii. Reasonable efforts determination or finding it unnecessary
  - 2. Other considerations
    - a. Child's wishes and potential conflicts
    - b. Evolving law
    - c. Appropriate & available family
-

- d. Ongoing efforts to locate for the biological father
- e. Appropriate restraining orders
- f. Protection orders from other courts
- g. Child protective mediation as alternative

**F. Review Hearings**

- 1. Types of review hearings
  - a. Judicial review hearings may be conducted at any time and by judge or magistrate
  - b. Statutorily required review hearings include semi-annual administrative review(AR)/sunset review
- 2. Procedural issues
  - a. Notice to all parties
    - i. Timing of review hearings is different for required hearings and discretionary hearings
  - b. Continuing issues of jurisdiction and venue due to change in circumstances (e.g., family moves during the course of the case)
  - c. Review/Administrative Hearings (compliance with case plan services)
  - d. Review long term planning for youth in foster care
  - e. Question agency freely and to be able to make findings about reasonable efforts (e.g., change in placement)
  - f. Parties are required to attend
  - g. Consider whether child is mature enough to participate
  - h. Review child placement
  - i. Rules of evidence do not apply absent new motion
- 3. Findings
  - a. Is it safe to return child home?
  - b. Considerations for finding child cannot be placed with either parent (R.C. 2151.419)
    - i. Offenses of violence/drug convictions
    - ii. Negligence
    - iii. Failure to participate in drug/alcohol treatment more than two times
    - iv. Parental rights of sibling involuntarily terminated
  - c. Reasonable efforts findings
- 4. Case Management and Timeline
  - a. Compliance with statutory timelines
  - b. Case plan review should cover
    - i. Compliance
    - ii. Modification
    - iii. Extension of orders

**II. Safety of Child and Other Considerations Regarding the Child**

- A. Apply knowledge about what is age and developmentally appropriate to meet needs and protect child:
    - 1. Medical issues (e.g., prenatal exposure/fetal alcohol disorders, etc.)
    - 2. Behavioral assessment/treatment needs
    - 3. School (e.g., educational needs & physical location); Educational–possible power of attorney if no other representation of child
-

4. Other age appropriate considerations regarding safety (e.g., competent child, newborn)
5. Special needs
- B. Consider age appropriate decisions regarding child attending and/or speaking in courtroom (e.g., impact on visitation, sibling relationships, reunification, possible voir dire for competency) and whether child may be present for part of hearing and removed for other parts of hearing
- C. Issues related to age of the child (e.g., change of placement issues)
- D. Factors to consider when deciding whether or not to remove the child from the parent/custodian/sibling's home (e.g., safety, stability, substance abuse, violence/domestic violence, housing, mental health)
- E. Appointing guardian ad litem/CASA to identify best interest of the child Role and qualifications defined in rule (e.g., Sup.R. 48) and statute
- F. Review the risk/safety instrument and its use by public children services
  1. How public children services makes its decision
  2. How public children services differentiates between risk & safety
- G. New temporary orders may be added at review hearings, as appropriate
- H. Monitor compliance of orders such as setting appointments with service providers before leaving court room
- I. Make best interest and reasonable efforts determination
- J. Appropriately consider recommendations of guardian ad litem/CASA

### **III. Communication with Children; Child's Rights, Wishes and Other Considerations**

- A. Knowledge of developmental stages is key to considering child's wishes
- B. Age appropriate communication skills will help gain valuable information and may come from GAL or CASA involvement
- C. Implement techniques by judge to enhance communication (e.g., child friendly atmosphere)
- D. Right for child to be present and other accommodations of child
- E. Specific knowledge needed to craft dispositional orders: Evidence based information
  1. Age and developmentally appropriate milestones
  2. Effects of domestic violence, even if child only witnesses abuse
  3. Bonding (e.g., impact on visitation)
  4. Sibling attachment, shared placement and/or visitation plans

5. Psychiatric/psychological screening for disorders—types and treatments (e.g., reactive attachment disorder, ADD/ADHD, co-occurring disorders, Post-traumatic stress disorder “PTSD”)
- F. Apply knowledge about what is age and developmentally appropriate to meet needs and protect child:
  1. Medical/behavioral health issues
  2. Educational—possible power of attorney if no other representation of child
  3. Other age appropriate considerations (e.g., competent child, newborn)

#### **IV. Rights and Other Considerations of Parents, Foster Parents, and Third Parties**

- A. Parents
  1. Issues of identifying parents
    - a. Minor parents may need both counsel and GAL
    - b. Appearances, including presence of institutionalized or incarcerated parents may be in-person or done via video or telephone
    - c. Putative fathers may request to participate while genetic testing results are pending
  2. Inform parents of:
    - a. Guardian ad litem/CASA duties
    - b. Differences between juvenile/adult court and civil/criminal court, including court procedures and timelines
    - c. Possible counseling options
    - d. Mediation options
  3. Advise/Inform parents of legal rights and court procedures
  4. Consider strengths and weaknesses of parents/custodians, including, but not limited to the following:
    - a. Stability
    - b. Substance abuse
    - c. Mental/behavioral health
    - d. Housing
    - e. Domestic violence and violence
    - f. Parental understanding of child’s needs
    - g. Poverty – unemployment
    - h. Parent’s disability that may require specialized services
  5. What are the least restrictive placement options, if needed?
    - a. Inclusion of individualized, child-specific language in judgment entries
    - b. If custodial parent, non-custodial parent unable to care for child, have parents been consulted about relative/non-relative as placement alternatives?
  6. Determine whether agency has exercised due diligence in efforts to identify/search for parents and relatives
  7. Determine compliance with pre-trial orders
    - a. Treatment compliance
    - b. Status on
      - i. Housing
      - ii. Employment
      - iii. Who lives in house
      - iv. Criminal history

- v. Family history of substance/drug dependency
      - vi. Mental health
      - vii. Other
    - c. Cooperation with assessment and follow-through (e.g., drug test)
  - 8. Explain case plan and seek approval
    - a. Case plan—(use state mandated form)
      - i. Determine whether public children services agency has satisfied its requirement to maintain and file a case plan with the court.
      - ii. Identify elements of a case plan such as
        - (1) Visitation
        - (2) Special needs of the child
        - (3) Legal immigration status
        - (4) Medical/Behavioral Health EPSDT (i.e., early periodic screening diagnosis and treatment)
        - (5) Education/special education (e.g., IEP, behavioral)
        - (6) Housing
        - (7) Employment
        - (8) Other parties (e.g., boyfriend)
        - (9) Parenting classes
        - (10) Knowledge of parenting issues and services (e.g., mental health, substance abuse)
        - (11) Compliance with the Ohio Administrative Code case plan requirements
    - b. Ensure that parties are fully informed/involved in crafting the case plan
      - i. Case plan management meeting/hearing with parties
      - ii. Best practices
      - iii. Review case law
    - c. Review case plan amendments
      - i. Approve, adopt, and distribute unapproved amendments
      - ii. Schedule and hold hearings on objections to emergency case plan amendments (R.C. 2151.412(E)(3))
      - iii. Schedule and hold hearing on objections to non-emergency case plan amendments (R.C. 2151.412(E)(2) & R.C. 2151.416(E)(1))
      - iv. Notices and timelines
    - d. Other considerations
      - i. Understanding of services and availability
      - ii. Ensure agency accountability
      - iii. Ensure parent or party accountability
      - iv. Monitoring court orders
      - v. Check parents' progress, or lack of progress, in complying with the reunification plan
      - vi. Review compliance with orders (e.g., visitation)
      - vii. Reasonable reunification services offered and used
  - 9. Consider and protect rights of foster parent to notice and to be heard
- B. Child
- 1. Review medical/behavioral health services
  - 2. Youth aging out of the system – such as post emancipation, independent living, federal funding availability (e.g. McKinney-Vento Homeless Assistance Act); foster care emancipation age from 18 to 21; extending jurisdiction beyond age



- 18 “Foster to 21” Bridges Program (R.C. 5101.141 – 5101.1414); explore merits of benchmark hearings
  3. Legal immigration status
  4. Review child's educational plan
  5. Compliance with court orders/parole for dual jurisdiction cases
  6. Sibling relationship
  7. Kinship relationships
  8. Look at vocabulary, courtroom environment, timely decision-making, and proceedings “through the eyes of the child”
  9. Youth giving input (e.g., on placement changes); ensure youth voice in court
    - a. Present and active in hearing
    - b. In camera interview
    - c. Guardian ad litem/CASA report on behalf of child
    - d. Caseworker response re: youth involvement in case planning / review
- C. Public Children Services Agency (PCSA)
1. Monitor PCSA compliance with case plan requirements
  2. Develop a standard practice for ensuring PCSA is fulfilling duties such as, but not limited to:
    - a. How often did you meet with child...?
    - b. What dates did you see parent...?
    - c. Ensure that caseworker knows availability of services and alternatives

## **V. Special Provisions, Considerations, and Other Issues**

- A. Planned Permanent Living Arrangement (PPLA)
1. Child’s attendance required for hearing and adoption
  2. Cover statutory considerations for PPLA
- B. Permanent custody to agency reviews—determine status of adoption
- C. Children in temporary custody of agency—Statutory requirements for six month extensions of temporary custody
- D. Divorcing or never married parents present special considerations
- E. Out-of-state placement (Interstate Compact) may be slow and push case timelines
- F. Military Issues
1. Servicemembers Civil Relief Act (50 U.S.C. §§ 3901-4043)
  2. Extend to active duty servicemembers
  3. Stay of proceedings
  4. Child support attachment
  5. Military legal assistance officers
- G. Parenting Coordination (Sup.R. 90-90.12) may be utilized in A/N/D cases

## **VI. Dispositional Alternatives and Placement Options**

- A. Placement Options include:
-

1. Home
  2. Non-custodial parent
  3. Relative/non-relative placement
  4. Foster placement
  5. Protective supervision
  6. Legal custody to parent or other
  7. Temporary custody to agency or other
  8. Permanent custody(PC) –change of circumstances v. best interest standard
  9. Planned permanent living arrangement (PPLA)
  10. Orders directed to a parent
  11. Concurrent permanency planning
  12. Search for relatives
    - a. Has a search for relatives been demonstrated and considered?
    - b. Putative father search
- B. Craft alternatives based on
1. Evidence
  2. Best practices
  3. Creativity
- C. Absent competing motions, the court either grants or denies the request for permanent custody. If granted, set frequent review for progress or permanency option
- D. Other dispositional orders (e.g., extending temporary custody to agency)

## **VII. Community Resources and Services**

- A. The court's relationship with the following individuals and entities and their respective roles is important:
1. Local public children services agency (PCSA)
  2. Other community agencies such as mental health, substance abuse, and domestic violence
  3. Law enforcement
  4. Prosecutor's office
  5. Public Defender's office
  6. Schools
  7. Treatment providers
  8. Evaluators
  9. Legal aid, court appointed, and private attorneys
  10. Guardian ad litem/CASA
  11. Other community agencies
  12. Special services that are not treatment (e.g., Rehabilitative Services Commission, "RSC," –disability specific services)
  13. Family and children first councils
- B. Maintain knowledge of providers and services
1. Background of facility and/or placement (e.g., history, licensing)
  2. Resources/appropriate services for family and children

3. Schools and special education resources, mental health, other community agencies & resources

#### **VIII. Trial Skills**

- A. Journalize the entry—For example, include in entry:
  1. School district cost determination & responsibility
  2. Child support
  3. Medical
  4. Visitation-use age appropriate orders
  5. Health insurance
  6. Tax deduction/exemption
  7. Required findings (e.g., Title IV-E reasonable efforts, best interests)
- B. Journalize the entry—Include in entry the required findings and supporting as required by R.C. 2151.414:
  1. Jurisdiction and venue
  2. Notice and service
  3. Parties and representation
  4. Citation of case law
  5. Citation of statute
  6. Recitation of facts
  7. Findings (R.C. 2151.414(E))
  8. Reasonable efforts findings
  9. Final appealable order
- C. Consider caseload management, time frames and other requirements
  1. Comply with statutory timeframes and make findings accordingly (e.g., 12 out of 22)
  2. Sunset provisions (R.C. 2151.353(F))
- D. Consider “promising” practices (e.g., set 90 day case reviews; use of specialized dockets such as family dependency treatment courts)
- E. It is the judge’s responsibility to determine issues of fact and make a clear record
- F. Use of expert testimony—(e.g., statements made by medical professionals)
  1. Reading psycho-social assessments and evaluations
  2. Aware of Rules of Evidence and case law as it applies to the use of these interviews of the child/children
- G. Courtroom management of parties & counsel, media, etc. can be difficult but excellent tools and educational materials are available
- H. Rules of evidence apply—Standard of proof is clear and convincing evidence
- I. Research and writing skills, especially for potential termination of parental rights cases—Write decisions to satisfy court of appeals

**IX. Leadership, Philosophy, and Personal Development**

- A. Collaborative Leadership can make all the difference in child protective services cases
  - 1. Knowledge of available services in the community
  - 2. Exercise of leadership by convening local agencies that play a role in the lives of children and families
  - 3. Ability to work effectively with public agencies
  - 4. Ensure accountability and oversee agencies' compliance in service for families
  - 5. Timely caseload management
  - 6. Important Characteristics of a Juvenile Judge include, but are not limited to:
    - a. Fairness
    - b. Ability to make tough decisions
    - c. Impartiality
    - d. Non-judgment, particularly in early stages of case
    - e. Ability to change
    - f. Respect
    - g. Keeping an open mind (e.g., regarding options and alternatives)
    - h. Patience
    - i. Knowledge of different cultures (both of the family and of the community)
    - j. Knowledge of the various theories about risk and resiliency factors in a child's life, including, but not limited to:
      - i. Poverty
      - ii. Substance abuse
      - iii. Homelessness
      - iv. Family violence
    - k. Active listening skills (particularly with parties)
    - l. Focus on keeping/promoting the best interest of the child first
- B. Communication Skills improve the buy-in of parties and the understanding of court orders, and include:
  - 1. How to handle high profile cases
  - 2. Communication with the media and understanding of & impact of social media
  - 3. Importance of making sure that all affected parties have the opportunity to be heard
  - 4. Listening carefully to the child and the family
  - 5. Special attention to skills needed to talk to children in an age appropriate manner
  - 6. Skill at verbal, nonverbal and written communication
- C. Judicial Philosophy
  - 1. General examination of philosophy, beliefs and values that each judge brings to the bench and his or her potential impact on decision making such as:
    - a. Judicial philosophy regarding permanency, reunification, termination of parental rights, and other options for children
    - b. What it means to involve the child and family in the court process and to give them a hand in crafting an appropriate disposition
      - i. Defining opportunity or means by which child and/or family members are heard
      - ii. Children's right to attend court hearings and to speak to the judge

- c. Belief that each case and family is different and the needs and disposition of each will differ
- d. Potential of every person to change
- e. Beliefs regarding the child, for example:
  - i. Children's lives can be changed by appropriate intervention
    - (1) Every child can grow, improve and be educated, given the proper care, support, love, and encouragement
    - (2) Every child has a right to a loving home, whether with parent, relative, non-relative, or adopting parent
  - ii. Adoption of teenage youth
- f. Beliefs regarding the family
  - i. Children should be maintained by and with parents when their safety and well-being can be ensured
  - ii. Families can benefit from assistance to help them be able to provide a safe, secure and stable home for their children
  - iii. All children have the right to live in a safe environment
  - iv. Preferential placement to relative/non-relative with established relationship with child when the parent(s) are not able to maintain child in their home
- g. The balance of due process with timeliness (a year is a very long time through the eyes of a child)
- h. Examine self awareness of cultural competency issues. For example, disproportionate minority contacts ("DMC") within the juvenile justice system, potential socio-economic biases (i.e., lessons from "Bridges Out of Poverty" curriculum ), and awareness of lesbian/gay/bisexual/ transgender issues
- i. Examine awareness of cultural competency issues. For example, disproportionate minority contacts ("DMC") within the juvenile justice system, potential socio-economic biases (i.e., lessons from "Bridges Out of Poverty" curriculum), and awareness of lesbian/gay/bisexual/ transgender issues
- j. Judicial Code of Conduct (e.g., impartial, keep the peace, fairness issues, integrity/ independence and appearance of same, demeanor, ex parte communication)
- k. Judge's role at this stage is to determine issues of fact (clear and convincing evidence) and apply the law—cautions/consideration of judge; Determine degree to which judge can participate

**X. Voluntary Surrender of Parental Rights to Children Under Six Months of Age and Voluntary Permanent Surrender of Parental Rights in Juvenile Court ("Voluntary Surrender") - Voluntary Surrender of Parental Rights to Children Under Six Months of Age Process and Procedures**

**A. Salutory Provisions**

- 1. R.C. 5103.15 Agreements for temporary custody.
  - a. R.C. 5103.15(B)(1) provides, in general, that, with juvenile court approval and subject to certain exceptions, the parents, guardian, or other persons having custody of a child may enter into an agreement with a public children services agency or private child placing agency surrendering the child into the permanent custody of the agency. An agency that enters into

- such an agreement may take and care for the child or place the child in a family home.
- b. R.C. 5103.15(B)(2) speaks specifically to the placement by parents of a child less than six months of age solely for the purpose of obtaining the adoption of the child (*see I.C. below*)
  2. R.C. 5103.151 Duties prospective parent of adoptee.
    - a. Relates to consent forms to be completed by parent of an adoptee under age six months and procedures for consent of parent of an adoptee.
    - b. Specifies form of consent, and consent is to be given, including circumstances under which parents of adoptee will be excused from appearing to give consent before the court.
  3. R.C. 5103.16 Certification required before associations and institutions may accept temporary or permanent custody of child.
    - a. R.C. 5103.16(A) provides that no child shall be placed or accepted for placement under any agreement or understanding that transferring or surrendering legal rights, powers, or duties of the legal parent, parents, or guardian of the child into the temporary or permanent custody of any association or institution that is not certified by the department of job and family services without the written consent of the office in the department that oversees the interstate compact for placement of children or by a commitment of a juvenile court, or by a commitment of a probate court as provided in this section.
    - b. R.C. 5103.16(B) relates to:
      - i. recordkeeping by institutions certified for the purpose of providing foster care or adoptive placements ((B)(1));
      - ii. prohibition against placement in permanent foster care or for adoption of child who has been temporarily surrendered.
    - c. R.C. 5103.16(C) provides for assumption of responsibility by adoptive parent of certain costs and expenses associated with the pregnancy of the birth mother, birth of the child, and custody of the child.
    - d. R.C. 5103.16(D) establishes requirements for placement or receipt of a child for purposes of adoption, including, as appropriate:
      - i. application by and appearance of legal parents before court prior to placement for approval of placement ((D)(1));
      - ii. completion of home study ((D)(2));
      - iii. approval of court ((D)(3)).
    - e. R.C. 5103.16(E) exceptions and definitions.
  4. R.C. 3107.06 Consent to adoption. Requires, unless excused, that consent to adoption must be given by:
    - a. the mother of the minor;
    - b. the father of the minor, if the minor was conceived or born while the father was married to the mother, or the minor is his child by adoption, or he has been determined to be the father by a court proceeding, or there has been a finalized acknowledgement of his paternity;
    - c. the putative father;
    - d. any person or agency having permanent custody of the child or who is authorized by the court to consent; or
    - e. the child to be adopted if over age 12.
  5. R.C. 3107.07 Consent unnecessary. Specifies circumstances under which consent is not necessary including, in relevant part, where:
-

- a. a parent of a minor who has been found by clear and convincing evidence to have failed without justifiable cause to provide more than de minimis contact with the minor or to provide for the maintenance and support of the minor as required by law or judicial decree for a period of at least one year immediately preceding either the filing of the adoption petition or the placement of the minor in the home of the petitioner;
    - b. a putative father who has not registered, as required, with the putative father registry or who has been found by the court either not to be the father of the child, or to have abandoned or willfully failed to support the child or the child's mother during or after her pregnancy and up to the time of surrender or placement.
  6. R.C. 3107.071] Effect of voluntary permanent custody surrender agreement. Governs process for and forms to be signed by biological parent to consent to disclosure of identifying information about the biological parent by the Ohio Department of Health to an adoptee and/or adoptive parent.
  7. R.C. 3107.083 Contents of form signed by parent. Specifies contents of consent form to be signed by parent pursuant to R.C. 3107.071.
  8. R.C. 3107.08 Executing consent. Specifies manner in which consent to adoption must be given by persons from whom consent must be obtained.
- B. Administrative Code Provisions
1. O.A.C. 5101:2—42—09, relating to authority of private child placing agency or public children services agency to assume and retain custody of a child.
  2. O.A.C. 5101:2—38—07, relating to requirement of case planning by private child placing agency for children in custody or under court-ordered protective supervision.
  3. O.A.C. 5101: 2—38—06, relating to contents of case plan of required private child placing agency case plan.
- C. R.C. 5103.15(B)(2) - Special Provisions for Children Under Six Months
1. Parents of a child under six months of age may enter into an agreement with a private child placing agency (PCPA) giving the agency permanent custody of the child and the juvenile court does not need to approve this surrender if the agreement is executed solely for the purpose of obtaining the adoption of the child.
  2. The agency must notify the juvenile no later than two business days after entering into the agreement and must also notify the court after the agency places the child for adoption, again, not later than two days after such placement. The juvenile court must journalize these notices once received.
  3. Parents, guardians, or others having custody of a child may enter an agreement with either a PCPA or public child services agency (PCSA) for a child under six months old, giving the agency permanent custody of the child. The agency can care for the child or place the child in a family home. In this circumstance, when it is not an agreement between a parent and a PCPA for the sole purpose of adoption, the juvenile court must approve same, and all other relevant procedures must be followed.
    - a. In this circumstance, the juvenile court can approve the placement without the parents appearing in Court if both parents enter into the agreement with the agency; signs the component of JFS 01666 titled "Statement Concerning Ohio Law and Adoption Materials;" and either checks Yes or No

on JFS 01666 component “Statement Regarding Release of Identifying Information” and the mother completes a portion of the form about expenses/health insurance coverage; the parents must also be given the chance to sign other parts of the form, if they choose, regarding exchange of identifying information and photographs.

- i. The agency must file the agreement with the juvenile court no later than two business days after the parents execute same and give the parents a copy. The court and agency shall retain copies of the agreement and the agency must also file a copy with the probate court where the petition for adoption is filed.
4. In either of the two situations involving the voluntary surrender of a child under six months of age described above, the parent or person with custody and the agency accepting custody must agree that the permanent surrender is in the child’s best interests.

D. Other Considerations

1. An agency accepting permanent custody of a child must be certified by the Ohio Department of Job and Family Services.
2. Any permanent surrender agreement described above entered into by a parent under 18 is valid, just as if the parent were over 18.
3. A permanent surrender agreement cannot be executed until at least seventy-two (72) hours after the birth of the child has passed.

E. Forms and Other Requirements [2, 3, 4, 6]

Contents of Agreement: JFS 01666

1. The agency must use the Job & Family Services Form 01666 called “Permanent Surrender of Child” (rev. 10/2013); this agreement must be in writing. It can provide provisions for the child’s care and can also authorize the PCPA to appear for all adoption proceedings and consent to the adoption.
2. Once an agreement is executed, the biological parent(s) must complete social and medical histories as it relates to the child.
3. The PCPA’s consent to the adoption is binding on all persons involved once the adoption is finalized, even if a parent/guardian is not made a party to the adoption.
4. At least 72 hours before JFS 01666 is executed, the adoption assessor must meet with the parents, guardian, or other persons with custody of the child and do the following:
  - a. Discuss options other than surrender;
  - b. Advise that execution of JFS01666 will terminate all parental rights and residual rights and responsibilities;
  - c. Unless the JFS 01666 is between a PCPA and a parent for purpose of adoption for a child under six months, advise that the Juvenile Court must approve the permanent surrender;
  - d. Provide information about open adoption and Ohio adoption procedures;
  - e. Review, discuss, and complete “Ohio Law and Adoption Materials” (JFS 01693 rev. 5/2009).

F. Duration, Effect, and Revocation of the Agreement

1. When a parent enters into a voluntary surrender agreement with a PCPA for purposes of adoption, the parent will not be given the opportunity to consent to



the adoption in addition to signing the permanent surrender assuming the parent has fully completed the permanent surrender form and the agency has filed same with both the juvenile court and probate court.

2. If the permanent surrender involves a PCPA and child under six months for the purpose of adoption, if the child has not been placed for adoption within six months after the agreement is executed without court approval, the PCPA must request that the juvenile court hold a review hearing and submit a case plan pursuant to 5101:2—38—07 and 5101: 2—38—06.
3. The juvenile court does not have jurisdiction to revoke a permanent surrender with a PCPA for purposes of adoption, as the juvenile court's approval is not required in such a situation. A juvenile court's administrative function of journalizing the permanent surrender upon receipt of same does not invoke its jurisdiction regarding same. See *In Re: T.J.B.*, 2014-Ohio-2028 (1st Dist. Hamilton) and *In Re E.B.*, 2008-Ohio-784 (9th Dist. Summit).

G. Summary of Adoption Process after Permanent Surrender

1. Once a PCPA has permanent custody of a child less than six months of age, the child is placed with prospective adoptive parent(s). The parents (Petitioners) file a Petition for Adoption and other required forms in the county probate court where the agency with custody of the child is located, the child was born, the petitioners reside, the home of record for a person stationed in military service, or where the birth parent(s) reside.
2. A final adoption hearing can be scheduled six months from the date of placement.
3. During the waiting period, an assessor conducts monthly visits at the home and files associated reports with the court.
4. In order to finalize an adoption, the court must find that the child was eligible for adoption, the Petitioner was eligible to adopt, that all state and local rules and procedures were followed, and that the adoption is in the child's best interests.

H. Other Relevant Adoption Statutes to Note [2, 5, 6]

1. Consent to Adoption: R.C. 3107.06
2. Consent Not Required: R.C. 3107.07
3. Executing Consent to Adoption: R.C. 3107.08 – The agency with permanent custody must consent to the adoption in a situation where a parent and an agency have entered into a permanent surrender agreement.
4. Taking Social and Medical Histories of Biological Parents: R.C. 3107.09

I. Attorney Facilitated, Private/Targeted Adoptions

1. Private/targeted adoption are arranged through an attorney and do not utilize the services of a PCPA or PCSA, except for the limited purpose of completing the home study in some cases.
2. One attorney represents the prospective adoptive parent(s) and another attorney represents the birth parent(s).
3. The birth parent(s) have custody of the child and place the child directly with the adoptive parent(s) for purposes of adoption. To accomplish this, the birth parent(s) typically sign a consent to the adoption instead of a permanent surrender; however, sometimes a permanent surrender can be used if the private attorney contracts with a social worker to complete the process for same.

4. When a consent is used in place of a permanent surrender, the procedure for voluntary surrender of parental rights is as follows:
  - a. The prospective adoptive parents file a Preplacement Application and related home study and must be approved by the court before a child is placed with them. – Form: Preplacement Application and Affidavit, ePC-A-18.PP1
  - b. A placement and consent hearing is held in Probate Court at least 72 hours after the child's birth.
  - c. At this hearing, the birth parent(s) sign(s) the consent to the adoption and other related forms. None of these forms can be e-filed; must be brought to court and signed in the court's presence, unless specifically excused.  
Forms:
    - i. Application for Placement, ePC-A-18.p1
    - ii. Affidavit for Placement, ePC-A-18.p2
    - iii. Consent to Adoption, ePC-A-18.3
    - iv. Custody Affidavit, ePC-A-18.P3
    - v. Birth Mother/Birth Father Affidavit at Placement, ePC-A-18.P4
    - vi. *Proposed* Entry Approving Placement, ePC-A-18.P5e
  - d. The Magistrate goes through a series of questions with the birth parent(s) to be sure the placement is being made voluntarily and that the birth parent understands his/her rights.
  - e. The child is then legally placed with the prospective adoptive parent and the adoptive parents can file the Petition for Adoption and all related paperwork.
  - f. The consent to the adoption by the birth parent(s) is irrevocable and cannot be withdrawn after the entry of an interlocutory order or final decree of adoption, when no interlocutory order has been entered. Consent may be withdrawn prior to the entry of an interlocutory order/final decree of adoption if the court finds, after hearing, that the withdrawal is in the best interest of the person to be adopted and the court authorizes same. R.C. 3107.084.
  - g. An interlocutory hearing can be scheduled 30-45 days from date of placement. This hearing has the same effect as a final hearing and once issued, an interlocutory order has the same effect as a final adoption decree.
  - h. When an interlocutory order is issued, the final adoption decree is atomically issued six months from the date of placement. There is no separate final hearing in this case, but the Court continues to supervise the placement until the decree is issued.
  - i. Prior to the placement and consent hearing, the child usually goes from the hospital to the prospective adoptive parent's home. Since there is no court order in place at this time, a "Babysitting Agreement" and/or a Power of Attorney is signed by the birth parent(s), which gives the adoptive parents permission to leave the hospital with the child, the right to care for the child, and make medical decisions for the child.
    - i. This is typically signed by the birth parent(s) in the hospital, shortly after birth.
    - ii. Confidentiality is important on this form, and appropriate measures must be taken to be sure personally identifying information on these forms is redacted as needed.

- iii. The Columbus-area hospitals differ on what needs to be included on these forms; it is best to make contact with the individual hospital's adoption social worker prior to the child's birth and ask if they need to see the sample Babysitting Agreement and/or Power of Attorney ahead of time.
- J. Protection of Tribal Rights: The Indian Child Welfare Act.
  - 1. History of ICWA
    - a. Historical treatment of Indians in United States
    - b. Passage of ICWA
      - i. Congress passed ICWA in 1978 in response to the alarmingly high number of Indian children being removed from their homes by both public and private agencies. 25 U.S.C. § 1901
      - ii. The intent of Congress under ICWA was to "protect the best interests of Indian children and to promote the stability and security of Indian tribes and families" (25 U.S.C. § 1902).
  - 2. Applicability of ICWA
    - a. Applicability of ICWA to Ohio – O.A.C. 5101:2-53-01 through O.A.C. 5101:2-53-08
    - b. When does ICWA apply?
      - i. Indian Child- as defined by 25 U.S.C. § 1903(4)
      - ii. Member of an Indian tribe
      - iii. *O*religible for membership in an Indian tribe and is the biological child of a member of an Indian tribe
      - iv. As determined by the tribe
        - (1) In a voluntary placement proceeding where a consenting parent evidences a desire for anonymity, the court shall make its inquiry in a manner that will not cause the parent's identity to become publicly known. *BIA Guidelines (B.1)*
        - (2) Although tribal verification is preferred, a court may want to seek verification from the BIA in those voluntary placement cases where the parent has requested anonymity and the tribe does not have a system for keeping child custody matters confidential. *BIA Guidelines (B.1)*
        - (3) See also, O.A.C. 5101:2-53-01
      - v. Child custody proceeding- as defined by 25 U.S.C. § 1903(1)
        - (1) Involuntary placements in foster care, in institutions or with guardians;
        - (2) Terminations of parental rights; and
        - (3) Adoptive & pre-adoptive placements
        - (4) See also, O.A.C. 5101:2-53-01
  - 3. Other considerations
    - a. Covers children living on or off Tribal lands.
    - b. Covers both parents' cases even if child's ancestry is only through one
  - 4. Jurisdiction
    - a. 25 U.S.C. § 1911(a) grants tribes exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled on a reservation.

- b. 25 U.S.C. § 1911(b) provides a preference for tribal jurisdiction for any state court proceeding for foster care placement or termination of parental rights where Indian child does not reside on the reservation.
  - c. 25 U.S.C. § 1911(c) gives tribes a right to intervene in any state court foster care placement of or termination of parental rights to an American-Indian child.
  - d. Each of these provisions applies whether the proceeding is involuntary or voluntary.
5. Applicability to Adoption [2, 3]
- a. Notice
    - i. Notice must be provided in involuntary proceedings. For all hearings.
      - (1) At least 10 days prior notice to:
        - Mother
        - Father
        - Tribe(s)
        - Any Indian custodian
      - (2) To BIA secretary, if tribe cannot be determined.
      - (3) 25 U.S.C. § 1912(a)
    - ii. BIA Guidelines indicate that notice is not required in voluntary proceedings.
      - (1) “Indian tribes and extended family members have substantial rights under the ICWA even in voluntary proceedings. Providing notice to a tribe will allow the tribe to identify if there are good tribal or family placements available for a child and will lessen the risk of a child being transferred to a new placement after an extended time in an initial placement event that can be difficult for all concerned.” *Native American Rights Fund*. “For these reasons, several states have enacted more stringent requirements and require notice be given to tribes in both voluntary and involuntary Indian child custody proceedings.”  
See, e.g., IOWA CODE 232B.5(8) (providing notice to tribes in voluntary proceedings); MINN. STAT. 260.761(3) (providing notice to tribes in voluntary adoptive and pre-adoptive proceedings); 10 OKLA. STAT. 40.4 (providing notice to tribes in voluntary proceedings).  
<http://www.narf.org/icwa/faq/notice.htm#Q16>
      - (2) Although the ICWA does not expressly require notice of *voluntary* adoptions, the notice requirement is implicit
  - b. Intervention

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child’s tribe shall have a right to intervene at any point in the proceeding. 25 U.S.C. § 1911(c), O.A.C. 5101:2-53-07
  - c. Consent

How it must be given

    - i. Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, the consent must be:
      - (1) executed in writing, and

- (2) recorded before a judge of a court of competent jurisdiction, and
  - (3) accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood
  - (4) 25 U.S.C. § 1913(a)
  - (5) O.A.C. 5101:2-53-07
- ii. Execution of consent need not be in open court where confidentiality is requested or indicated. *BIA Guidelines (E.1)*
- iii. The consent document shall contain the name and birthday of the Indian child, the name of the Indian child's tribe, any identifying number or other indication of the child's membership in the tribe, if any, and the name and address of the consenting parent or Indian custodian. A consent to termination of parental rights or adoption shall contain, in addition to the information specified in (a), the name and address of the person or entity by or through whom any preadoptive or adoptive placement has been or is to be arranged. *BIA Guidelines (E.2)(a) & (c)*
- d. **Timing**

Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

  - i. 25 U.S.C. § 1913(a)
  - ii. O.A.C. 5101:2-53-07
- e. **Revocation of Consent**

The consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

  - i. 25 U.S.C. § 1913(c)
  - ii. O.A.C. 5101:2-53-07
- f. **Collateral Attacks**

After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

  - i. 25 U.S.C. § 1913(d)
  - ii. O.A.C. 5101:2-53-07
- g. **Placement Preferences**
  - i. For adoptive placements, absent good cause to the contrary, preference is given in order of:
    - (1) a member of the child's extended family;
    - (2) other members of the Indian child's tribe; or
    - (3) other Indian families.
  - (4) 25 U.S.C. § 1915(a)
  - (5) See also, O.A.C. 5101:2-53-08

- ii. If the tribe has law establishing a different order of preferences that will be followed as long as foster/pre I adoptive placements are still least restrictive. 25 U.S.C. § 1915(c)
    - iii. Some examples of good cause to the contrary:
      - (1) Parent or older child requests exception
      - (2) 'Extraordinary' physical or emotional needs
      - (3) Preferred placement is unavailable after "diligent search."
      - (4) *BIA Guidelines (F.3)*
    - iv. The burden of establishing the existence of good cause not to follow the order of preferences established in subsection (b) shall be on the party urging that the preferences not be followed. *BIA Guidelines (F.3)*
    - v. Unless a consenting parent evidences a desire for anonymity, the court or agency shall notify the child's extended family and the Indian child's tribe that their members will be given preference in the adoption decision. *BIA Guidelines (F.1)(b)*
  - h. Other Issues
    - i. If an Indian child's adoption is set aside, or if the adoptive parents voluntarily consent to the termination of their parental rights, the court must notify the child's biological parents. *BIA Guidelines (G.1)*
    - ii. Adopted Indians who have reached age 18 may ask the court that entered their final adoption order for information about their tribal affiliation. The court must provide the information so that the adult adoptees can protect any rights flowing from their tribal relationships. *BIA Guidelines (G.2)*
- 6. United States Supreme Court Opinions
  - a. *Mississippi Band of Choctaws*
    - i. Issue: Were the children domiciled on the Indian reservation as defined by ICWA such that the tribe has jurisdiction over them for the purposes of this adoption, even though the children had never been to the reservation?
    - ii. Holding: Infants take their domicile from their parents. In this case, the parents were domiciled on the reservation. Therefore, the children were domiciled on the reservation as well.
    - iii. Tribal jurisdiction under 1911(a) was not meant to be defeated by the actions of individual members of the tribe
  - b. *Adoptive Couple v. Baby Girl*
    - i. Held that ICWA provisions on active efforts to prevent the breakup on an Indian family [25 U.S.C. § 1912(d)] and heightened burden of proof for termination of parental rights [25 U.S.C. § 1912(f)] did not apply to this private adoption proceeding.
    - ii. It also held that the adoptive placement preferences [25 U.S.C. § 1915(a)] did not preclude adoption by prospective non-Indian adoptive parents where no individuals within the Act's placement preferences had "formally sought" to adopt the child.
- K. Interstate Compact on Placement of Children (ICPC)
  - 1. Ohio is a member for the ICPC, so all placements, including in the context of voluntary surrender, must abide by ICPC if the placement will cross state lines
    - a. This includes when Ohio is the "receiving state" under the ICPC

- §5103.02(II) (P) – “Receiving state” means the state to which a child is sent, brought, or caused to be sent or brought
- b. This includes when Ohio is the “sending state” under the ICPC
- §5103.02(II) (T) – “Sending state” means the state from which the placement of a child is initiated
- i. The following curriculum focuses solely on Ohio as a sending state under the ICPC because voluntary surrender will by its nature
2. When does the ICPC apply in voluntary surrender cases?
- a. The ICPC does apply to *the interstate placement of any child by a public child placing agency or private child placing agency as defined in this compact as a preliminary step to a possible adoption.* §5103.02(III) (A) (3)
- b. The ICPC does NOT apply to *the interstate placement of a child by one relative with the lawful authority to make such a placement directly with a relative in a receiving state.* §5103.20 (III) (B) (2) - This is likely to be a private adoption arranged with private attorneys, birth parent(s), and adoptive parents only
- c. ICPC issues are likely to come up in voluntary surrender cases when the birth mother or parents have pre-selected a party who resides in another state that she/they want the child to be placed with for adoption prior to the voluntary surrender. Parents in this situation do have the option of executing a private adoption, but some will choose to voluntarily surrender the child through the probate court (if child is under 6 months of age) or through the juvenile court (if the child is over 6 months of age) and request that the pre-arranged, out-of-state adoptive placement be honored through a side agreement. In these situations, Ohio is the sending state.
- d. It is unlikely that ICPC issues will come up in voluntary surrender cases when Ohio is the receiving state.
- e. It is unlikely that ICPC issues will come up in voluntary surrender cases where the birth mother/parents have not pre-selected a party who resides in another state to adopt the child. In voluntary surrender cases where the birth mother/parents have not pre-selected a party to adopt the child, the custody of the child will transfer from the birth parent(s) to the public child placement agency. If and only after the public child placement agency finds an appropriate adoptive placement for the child in another state would ICPC be implicated in voluntary surrender cases of this nature.
3. Does the receiving or sending state maintain jurisdiction?
- a. §5103.20(IV) (A) *The sending state shall retain jurisdiction over a child with respect to all matters of custody and disposition of the child which it would have had if the child had remained in the sending state. Such jurisdiction shall also include the power to order the return of the child to the sending state.*
- b. §5103.20(IV) (B) *When an issue of child protection or custody is brought before a court in the receiving state, such court shall confer with the court of the sending state to determine the most appropriate forum for adjudication.*
- c. §5103.20(IV) (C) *In accordance with its own laws, the court in the sending state shall have authority to terminate its jurisdiction if:*
- i. (2) *The child is adopted; or*
- ii. (3) *The child reaches the age of majority under the laws of the sending state; or*
- iii. (4) *The child achieves legal independence pursuant to the laws of the sending state; or*
- iv. (5) *A guardianship is created by a court in the receiving state with the concurrence of the court in the sending state; or*



- v. (6) *An Indian tribe has petitioned for and received jurisdiction from the court in the sending state, or*
    - vi. (7) *The public child placing agency of the sending state requests termination and has obtained the concurrence of the public child placing agency in the receiving the state.*
  - d. §5103.20(IV)(D) *When a sending state court terminates its jurisdiction, the receiving state child placing agency shall be notified.*
  - e. §5103.20(IV)(F) *Nothing in this article shall limit the receiving state's ability to take emergency jurisdiction for the protection of the child.*
4. What does the ICPC require Ohio, as a sending state, to do before the child can be successfully placed in the receiving state?
- a. Assessments (§5103.20(V))
    - i. Prior to the child being transferred to the receiving state, the Ohio public child placement agency involved must provide a written request for an assessment to the receiving state (§5103.20(V)(A))
    - ii. The Ohio public child placement agency must provide any supporting or additional information necessary to complete the assessment requested by the receiving state (§5103.20(V)(E))
  - b. Placement Authority (§5103.20(VI))
    - i. The receiving state has authority to approve or not approve of any interstate child placement (§5103.20(VI)(A)-(B))  
The public child placing agency must approve the proposed placement before the child can be placed
    - ii. If the receiving state does not approve of the placement, then the receiving state shall provide written documentation of the decision and the rules of the Interstate Commission that support the determination

## **XI. Voluntary Surrender - Voluntary Permanent Surrender of Parental Rights in Juvenile Court Process and Procedures**

### **A. Salutory Provisions**

- 1. R.C. 5103.151
  - a. “identifying information” – R.C. 3107.01
  - b. adopted person – R.C. 3107.45
  - c. R.C. 5103.15(B)(1) – Conditions of a Juvenile Court Approving the parent’s agreement with a public children services agency or private child placing agency
  - d. R.C. 3107.083(A)(1)(a),(b),(c)
- 2. R.C. 5103.15 – Applies only to private, contractual transfers of permanent custody by a parent to a children services agency
- 3. R.C. 3107.071 – Parental consent required despite voluntary permanent custody surrender agreement; exceptions
- 4. R.C. 2151.3515 through R.C. 2151.3530 (Ohio’s deserted child law) govern the manner in which a child can be deserted
- 5. R.C. 2151.38 – Inapplicable to a proceeding for approval of a permanent surrender agreement under R.C. 5103.15 & R.C. 5153.16(B)
- 6. R.C. 5153.16(B) – A county Children’s services board is authorized to enter into permanent surrender agreements with parents, guardians and legal custodians.



7. R.C. 5103.16 – Requires that where parental consent to surrender is given before an employee of the child welfare agency, that employee execute an affidavit to the effect that the legal rights of the parents have been fully explained to the parents, prior to the execution of the consent, and that the action was done after the birth of the child.
  - B. O.A.C. – 5101:2-42-09 – Acceptance of permanent custody by permanent surrender
  - C. Ohio Juvenile Law – Juv.R. 38 Voluntary Surrender of Custody (From R.C. 5103.15) “Permanent surrender” – defined in Juv.R. 2(Z) and R.C. 2151.011(B)(21)
  - D. Case Law Information  
Public – County Children Services Board
    1. Parental Surrender not equal to Judicial Commitment: A parental surrender of a child to a county children services board is not equivalent to a judicial commitment to the board and does not, therefore, deprive the juvenile court of its jurisdiction to entertain a motion to vacate an order consenting to the surrender. R.C. 2151.38, 5103.15, 5153.16(B)
    2. Consent: Legal transfer of permanent custody if a child to a county children services board is contingent upon consent to transfer by juvenile court. R.C. 2151.38, 5103.15, 5153.16(B)  
It is the function of juvenile court in consenting to a permanent surrender of a child to a county children services board to insure that the surrender is made by the parent voluntarily with full knowledge of the legal import of the relinquishment of parental right accomplished thereby and to insure that the child welfare agency does not enter into improvident contracts. R.C. 2151.38, 5103.15, 5153.16(B)
  - E. Private Agency  
Revocation of Agreement: An agreement by a child’s parents or legal guardian to surrender a child to the permanent custody of a certified association or institution describe in R.C. 5103.15 constitutes a contract where accepted by such association or institution and when voluntarily made without fraud or misrepresentation. Such a contract cannot be revoked by the parents or legal guardian absent the consent of the association or institution.
    1. What circumstances need to exist for a Surrender Agreement and/or Voluntary Surrender to be revoked?
    2. Improvident Contracts
    3. Juvenile Statute, when strictly construed, does not recognize the right of withdrawal of consent by a parent of a child less than six months old where permanent surrender has been made to a private agency solely for the purpose of adoption.
  - F. Considerations for Both Public & Private Agencies  
Service of Process (Notice & Summons): No service of Process is required by R.C. 5103.15 or R.C. 5153.16(B) prior to judicial consent being given to a voluntary agreement to surrender parental rights
  - G. Considerations
    1. Permanent Surrender Agreements
-

2. Statutory Differences for adoption by private placement and by permanent surrender to a public agency.
3. Rights of Natural Father Re: Voluntary Surrender When Parents are Unmarried vs. Married – Who has the right to voluntarily surrender a child? (Father? Other Family Members?)
4. Mother's Exclusive Right to Relinquish Authority
5. Side Agreements to Permanent Surrender Agreements – open adoptions with visitation by family members (be specific), adoption by family members
6. Minor Consent to Permanent Surrender Agreements (R.C. 5103.15(D))
7. Time Frame from Permanent Surrender Agreement to Consent by Juvenile Court

“A private child placing agency or public children services agency that seeks permanent custody of a child pursuant to division (B) (1) of this section shall file a request with the juvenile court of the county in which the child has a residence or legal settlement for approval of the agency's permanent surrender agreement with the parents, guardian, or other persons having custody of the child. Not later than fourteen business days after the request is filed, the juvenile court shall determine whether the permanent surrender agreement is in the best interest of the child. The court may approve the permanent surrender agreement if it determines that the agreement is in the best interest of the child and, in the case of an agreement between a parent and the agency, the requirements of R.C. 5103.151 are met. The agency requesting the approval of the permanent surrender agreement shall file a case plan, prepared pursuant to R.C. 2151.412, with the court at the same time that it files its request for the approval of the permanent surrender agreement.” *In re George*, 2008-Ohio-121, ¶ 3. (5th Dist., Muskingham)

#### H. Forms

1. Complaint for Consent to Surrender of Permanent Custody
2. Sample Affidavit (R.C. 5103.16):

“You are advised that by signing such surrender you are permanently surrendering, releasing and giving up all present and future legal rights that you have or may possess in your above-named child and which you are a parent naturally have or would have in respect to your child; and that thereafter you will be in the same legal position as would be a person totally unrelated to your child. “Among these legal rights in and to your child being permanently surrendered, released and given up by you now and irrevocably upon your signing the above referred to Permanent Surrender of Child, but not necessarily limited to these, are the following rights:

“(1) The right of custody of your child including all present and future rights to have, control or possess your child, to see or visit your child, to determine on the care, education, living surrounding, location and upbringing of your child;

“(2) The right of any possible future support of financial aid to you from your child, and of receiving the future earnings and any other property of your child; and

“(3) The right of inheritance from your child, or through your child, which might otherwise legally be yours by reason of your being the mother of the child; and

“(4) The rights and privileges that now or in the future might be given by law to

any parent in respect to the child of such parent.”

Sylvester, *The Law of Adoption in Ohio*, 2 Capital Univ. L. Rev. 23, 29 (fn. 47).

3. JFS Form 01666 Permanent Surrender of Child

## **XII. Talking to Children and Youth Involvement in the Court**

- A. Tips and techniques for effectively communicating with and questioning children (utilizing age appropriate knowledge) include:
  1. Understanding their cognitive and linguistic capabilities
  2. Knowing that the child’s ability to respond, give an account, understand is not same as an adult’s
  3. Utilizing skills to decipher answers
  4. Additional considerations such as cultural differences and English as a Second Language
- B. Youth engagement in the courtroom
  1. Institute strategies to engage foster care youth in court proceedings, particularly those proceedings that involve child dependency issues
  2. Engage parents/guardians in order to support families’ ability to manage their own problems without court intervention
  3. Special factors to consider such as age, mental health, developmental and safety issues of the child
- C. In camera Interviews—factors to consider include, but are not limited to
  1. Requirement of guardian to be present during interviews
  2. Making an appropriate record
  3. Age appropriate considerations

## **XIII. Overlap with Domestic Relations and/or Probate Courts - Overall Jurisdictional Statutes**

- A. Juvenile Court (R.C. 2151.23)
- B. Probate Court (R.C. 2101.24)
- C. Domestic Relations Court (R.C. 3101.01 – R.C. 3127.53)

## **XIV. Overlap with Domestic Relations and/or Probate Courts - Significant Case Types That May Overlap**

- A. Transfer of Cases from Certification of Domestic Relations to Juvenile Court
  1. Explore the following:
    - a. What, how and when to transfer a domestic relations case to the Juvenile Court
    - b. Which statute to apply and whether a best interest, unsuitability or no standard is required
  2. Statutes
    - a. Jurisdiction of Juvenile Court (R.C. 2151.23)
    - b. Certification to Juvenile Court (R.C. 3109.06)

- c. Allocating parental rights and responsibilities for care of children - shared parenting. (R.C. 3109.04(D)(2))
  - 3. When is a finding of best interest, unsuitability or neither standard is needed
    - a. *In re Whaley* 86 Ohio App.3d 304 (4th Dist. Athens 1993)
    - b. *Baker v. Baker* 113 Ohio App.3d 805 (8th Dist. Summit 1996)
- B. Guardianship of Minor
  - 1. Statutes Regarding Guardianship of Minor
    - a. Guardianship of the Person (R.C. 2111.06)
    - b. Jurisdiction of Probate Court (R.C. 2101.24)
    - c. Jurisdiction of Juvenile Court (R.C. 2151.23)
    - d. Jurisdictional Standards (R.C. 3127.01 – R.C. 3127.53)
    - e. Guardian of Minor (R.C. 2111.12)
    - f. Dependent Child (R.C. 2151.04)
    - g. Best Interest Factors (R.C. 3109.04(F))
  - 2. Jurisdiction
    - a. The probate court has exclusive jurisdiction to appoint guardians for minors (R.C. 2101.24, R.C. 2111.50)
    - b. The court must comply with jurisdictional standards (R.C. 3127.01 - R.C. 3127.53)
  - 3. Appointment—A guardian of the person shall be appointed as to a minor
    - a. Having no father or mother; or
    - b. Whose parents are unsuitable to have custody; or
    - c. Whose interests would be served by the appointment of a guardian (R.C. 2111.06)
  - 4. Best interests/Unsuitability—Guiding Principles
    - a. Best interest factors utilized in custody proceedings may be found in R.C. 3109.04
    - b. *In re Perales*, 52 Ohio St.2d 89 (1977)—The Court may not award custody to a nonparent without first making a finding of unsuitability:
      - i. The parent abandoned the child;
      - ii. The parent contractually relinquished custody of the child;
      - iii. The parent became totally incapable of supporting or caring for the child; or
      - iv. An award of custody to the parent would be detrimental to the child.
  - 5. Selection
    - a. Appointment of Guardian in a Will or Power of Attorney (R.C. 2111.21)
    - b. Selection of Guardian by a minor who reaches age 14 (R.C. 2111.12(A))
  - 6. Termination
    - a. Once a guardianship is terminated, the probate court no longer has jurisdiction to determine the child's custody.
    - b. The juvenile court then has exclusive jurisdiction to determine custody (R.C. 2151.23(A))

## **XV. Overlap with Domestic Relations and/or Probate Courts - Other Cases That May Overlap**

- A. Child Support Order Prior to Divorce
    - 1. Obtained in juvenile court
    - 2. Subsequently, divorce is filed
    - 3. What happens to the juvenile support order?
-

4. May not necessarily be an issue if the same court has jurisdiction over child support, or
  5. If the support order was obtained administratively
  6. If the case remains in juvenile, then the issue surfaces when a divorce is subsequently filed.
  7. No statutory authority to transfer support order
  8. Best Practices such as
    - a. Once the divorce is final, reduce arrearages to judgment
    - b. Dismiss the child support case
- B. Competing Custody Orders
1. A juvenile, who is the subject of an existing Domestic Relations custody order is now the subject of a juvenile case of dependency, neglect, abuse, unruly or even delinquency
  2. Ramifications?
  3. Juvenile court has exclusive jurisdiction
    - a. Provided the child is not a “ward” of any other court in the state
    - b. But, jurisdiction may be “concurrent” (*Poling*)
    - c. Juvenile court may determine custody even if custody was previously awarded in a Domestic Relations case
  4. What court can modify later:
    - a. If juvenile case is concluded, which court has jurisdiction now to modify?
    - b. If juvenile court relinquishes jurisdiction, custody issues may revert back to Domestic Relations. *Lindenmayer v. Lindenmayer*, 2011-Ohio-5511 (5th Dist. Licking)
  5. Concluded juvenile cases – if juvenile court awards custody to a party and “closes” case?
    - a. Does juvenile court have continuing jurisdiction?
    - b. Is there still “concurrent” jurisdiction?
  6. Best practice such as  
Juvenile court final judgment entry clarify conclusion of jurisdiction or continuing jurisdiction
- C. Conflicting Protection Orders
1. Protection orders issued by one court and subsequently conflicting order issued by juvenile arising out of dependency, neglect or abuse case
  2. R.C. 2151.23(A) (14) grants exclusive jurisdiction of juvenile court over controlling conduct of parent, guardian or custodian of alleged delinquent, unruly or juvenile traffic offender
  3. R.C. 2151.359 and R.C. 2152.61 likewise gives juvenile court jurisdiction to control the conduct or relationship of parents, guardians or custodians harmful or detrimental to the child
  4. Rules of Superintendence 10.06 - Rule 10.06. Inter-Court Communication in Domestic Violence and Related Cases
  5. Authority for inter court communications
    - a. Determining the existence of conflicting order
    - b. Avoiding conflicting order
- D. Certification
-

1. Domestic Relations Court determines neither parent should have custody, attempts to certify to juvenile court.
    - a. Certification to juvenile court can occur with consent of juvenile court or without consent if a finding of unsuitability of parents
    - b. R.C. 3109.04(D)(2) and R.C. 3109.06
    - c. Since the statute refers to “consent” of juvenile court, implication is that the juvenile court could decline certification.
  2. Certification as the complaint
    - a. Is the certification a complaint of dependency, neglect or abuse?  
Under this logic, it would not appear as though juvenile court could order the involvement of child protective services
    - b. Can the Domestic Relations judge file a complaint of dependency, neglect or abuse?  
R.C. 2151.27 and Juv.R. 10 both authorize any person who has knowledge of a child who appears to be abused, neglected, dependent or unruly may file a complaint in juvenile court. Thus, it would appear that a Domestic Relations judge has authority to file under this section.
    - c. Can the Domestic Relations judge order the prosecutor to file a complaint?  
Case law has consistently held that the prosecutor cannot be compelled to prosecute absent an abuse of discretion.
- E. Adoption—Role of Juvenile versus Probate Court (*In re Application of Pushcar*, 110 Ohio St.3d 332, 2006-Ohio-4572; *State ex. Rel. Allen Cty. Children Srvc. Bd. V. Mercer City. Court of Common Pleas, Probate Div.*, 150 Ohio St.3d 230, 2016-Ohio-7382 (a fix is being proposed as of 2018).) if juvenile proceeding initiated prior to adoption procedure, probate court has to wait
- F. Change of Name—e.g., genetic testing and name
- G. Children with Mental and Physical Disabilities
1. Parental common law duty to support beyond the age of majority
  2. *Castle v. Castle*, 15 Ohio St.3d 279 (1984)
  3. Codified in R.C. 3119.86
- H. Adult Guardianship—for example, parents unmarried, custody issues for an autistic child who becomes 18 and parents seek guardianship, if private custody (*Castle v. Castle*, 15 Ohio St.3d 279, (1984)); also, another example involving domestic relations and probate courts are cases when a person declared incompetent has a child and comes to the juvenile court regarding custody
- I. Reverse Transfer (when returned back to juvenile court) (R.C. 2152.26, R.C. 2152.02(C)(5); R.C. 2152.121; R.C. 2152.14; R.C. 2152.13; R.C. 2152.01)
- J. Parents Leave Jurisdiction and Child is Remains

# **Child Support, Parentage, and Custody**





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## **Child Support**

### **Educational Content:**

- I. Overview of Child Support Guidelines and Federal Mandate (42 U.S.C. 666-667)**
  - A. Goals
    1. To increase adequacy, consistency, and predictability of child support orders
    2. To increase compliance through perceived fairness of child support orders
    3. To increase the ease of administration of child support cases.
  - B. Descriptive and numeric criteria: child support should be based on actual economic cost of raising children, not pure discretion, to ensure financial security for children as they grow up
  - C. Consideration of earnings and income of non-custodial parent
  - D. Provide for health care needs through health insurance or cash medical support
  - E. Presumptive guidelines rebuttable based on state-determined criteria
    1. Concept of income shares model used in Ohio
      - a. Premise: Child entitled to same amount of expenditure that would have received if parents and child lived together. In intact home, income of parents is pooled and spent for benefit of all household members, including children
      - b. Basic amount adjusted for realities of individual cases -  
The more factors, the more customized the amount is for a particular family
      - c. Validity of model
    2. ODJFS Child Support Guidelines Advisory Council (R.C. 3119.023)
      - a. Quadrennial review process
      - b. To determine whether child support orders issued in accordance with basic schedule and worksheets adequately provide for children
      - c. ODJFS must consider:
        - i. Economic data on the cost of raising children
        - ii. Labor market data, such as unemployment rates, employment rates, hours worked, and earnings, by occupation and skill level for the state and local job markets
        - iii. The impact of guideline policies and amounts on custodial and noncustodial parents who have family incomes below 200% of the federal poverty level
        - iv. Factors that influence employment rates among noncustodial parents and compliance with child support orders
        - v. Analysis of following to ensure deviations from basic schedule are limited and support amounts are appropriate
          - (1) Case data on application and deviations as gathered through sampling or other methods
          - (2) Rates of default, child support orders with imputed income, and orders determined using low-income adjustments such as a self-support reserve

- (3) A comparison of payments on orders by case characteristics, including whether order was entered by default, based on imputed income, or determined using the low-income adjustment
  - (4) Meaningful opportunity for public input, including input from low-income custodial and noncustodial parents and their representatives
- 3. Basic child support schedule (R.C. 3119.021)
  - a. Economic assumptions of income equivalency model (spending patterns of intact/non-intact family)
  - b. Assumes child is with one parent 100% of time; costs associated with other parent's parenting time not factored in
  - c. Utilizes 2011 Betson-Rothbarth IV methodology and 2004-2009 economic data updated to current price levels
  - d. Applicable only to income between \$8,600-336,000
    - i. Interpolation permitted (R.C. 3119.05(G))
    - ii. Invalidity of economic data for income not within schedule
    - iii. Extrapolation above \$336,000 not supported by economic data
  - e. Sets forth only basic child support obligation
  - f. Covers average child-rearing expenses (housing, transportation, food, apparel, etc.)
  - g. Excludes child care expenses, insurance premiums and extraordinary uninsured medical expenses which are highly variable between families and cannot be estimated
  - h. Includes visible self-sufficiency reserve (SSR) that protects obligors under 116% of federal poverty level (ex. \$12,060 for a single person) with a gradual phaseout as income rises
  - i. Per child shares not proportionate
- 4. ODJFS mandate to update basic schedule, worksheets, and Guidelines Manual (standard instructions) every four years (R.C. 3119.021, R.C. 3119.022)
  - a. According to legislatively prescribed methodology (R.C. 3119.021) executed by ODJFS
  - b. To guarantee regular and routine updates and flexibility to make changes in a timely fashion
  - c. Rulemaking authority through JCARR process
  - d. Basic schedule, worksheets (JFS 07768, JFS 07769), and Guidelines Manual (JFS 07766) contained in Ohio Administrative Code (OAC Chapter 5101:12)

## **II. Fundamental Aspects of Child Support Obligation**

- A. Parental duty of support: Parental responsibility to feed, clothe, provide necessities for child translated into a monetary obligation (R.C. 3103.03, R.C. 3103.031, R.C. 3111.77)
- B. Duration
  - 1. Age of majority (R.C. 3109.01)
  - 2. Beyond age of majority (R.C. 3103.031, R.C. 3119.86)
    - a. By parental agreement (R.C. 3119.86(A)(1)(b))
    - b. Mental and physical disability (R.C. 3119.86(A)(1)(a)), "Castle child"
    - c. If child continuously attends recognized and accredited high school full-time (R.C. 3119.86(A)(1)(c))

- i. Up to age nineteen
  - ii. During seasonal vacation periods
- C. Components of Child Support Order
  1. Periodic support payment (R.C. 3119.02)
  2. Health care coverage: medical support that includes a health insurance coverage or a public health care plan, payment of costs of premiums, copayments, and deductibles, or payment for medical expenses incurred on behalf of child (R.C. 3119.29-3119.56)
    - a. Health Insurance Coverage (R.C. 3119.30(A) and (B), R.C. 3119.302)) that is accessible and reasonable in cost
      - i. No point in ordering a parent to buy insurance child can't use or parent can't afford
      - ii. Accessibility (primary care services within 30 miles) (R.C. 3119.29(C), R.C. 3119.302(A) (4))
        - (1) Permissible if residents in geographic area customarily travel farther than 30 miles
        - (2) Permissible if accessible only by public transportation
      - iii. Reasonability of cost: cost of health insurance coverage not to exceed 5% of parent's annual gross income ("Health Insurance Maximum") (R.C. 3119.29(F), 45 CFR 303.31(a)(3))
      - iv. If cost is reasonable, order:  
Obligee to provide health insurance coverage who is rebuttably presumed to be the health insurance obligor (R.C. 3119.30(B))
      - v. Presumption may be rebutted, and obligor may be named health insurance obligor if:
        - (1) Obligor already has coverage that is reasonable in cost (R.C. 3119.30(B)(1)(a))
        - (2) Obligor already has coverage that is not reasonable in cost but still wishes to be named health insurance obligor) (R.C. 3119.30(B)(1)(b))
        - (3) Obligor can obtain coverage that is reasonable in cost through an employer or other source (R.C. 3119.30(B)(1)(c))
        - (4) Obligee is a non-parent individual or agency that has no duty to provide support (R.C. 3119.30(B)(1)(c))
      - vi. If cost not reasonable, may still order health insurance coverage if (R.C. 3119.302(A)(2)):
        - (1) If parent requests to obtain or maintain
        - (2) When it is in best interest of child and cost will not impose an undue financial burden on either parent (findings required)
    - b. Cash medical support (R.C. 3119.01(C)(1), R.C. 3119.30, 3119.302(B))
    - c. Uncovered health care expenses (R.C. 3119.30(A)) -  
Extraordinary expenses: uninsured medical expenses incurred during calendar year that exceed total cash medical support owed by parents during that year (R.C. 3119.01(C)(7), R.C. 3119.05(F))
  3. Tax dependency exemption (R.C. 3119.82) -  
Whenever court issues, modifies or reviews child support, court shall designate which parent may claim the children as dependents by
    - a. Agreement
    - b. Residential parent if parties do not agree if furthers best interest of child -  
Must consider any net tax savings, relative financial circumstances and needs

of parents and children, amount of time children spend with each parent, eligibility of parents for federal earned income tax credit or other state or federal tax credit, and any other relevant factor concerning the best interest of the children.

D. Jurisdiction

1. Original jurisdiction
  - a. Exclusive jurisdiction (R.C. 2151.23(A)(11), R.C. 3105.011)
  - b. Concurrent jurisdiction (R.C. 2151.23(B)(4))
    - i. Exercise of Juvenile court jurisdiction prohibited and Domestic Relations Court expanded to have jurisdiction in cases/proceedings initiated on or after 03/22/2019 if (R.C. 2151.233):
      - (1) Child's parents are married to each other
      - (2) Child's parents were married to each other but no longer are married to each other and there is no existing order for custody and support regarding the child or another child of the same parents over which the juvenile court does not have jurisdiction
      - (3) The determination is ancillary to the parents' pending or prior action for divorce, dissolution of marriage, annulment, or legal separation.
    - ii. Transfer of exclusive jurisdiction over an action or order issued prior to 03/22/2019 to domestic relations court from juvenile court (R.C. 2151.235):
      - (1) If parents of child are married to each other and not parties to a R.C. 2151.235 (C) pending proceeding
      - (2) If parents of child were married to each other but no longer are married to each other and there is an existing order for custody or support regarding child or another child of the same parents over which the juvenile court does not have jurisdiction
      - (3) If common pleas court exercising jurisdiction over a protection order under R.C. 3113.31 if that child or both parents of that child are subject to both a child support order and the protection order.
    - iii. Denial and acceptance transfer procedure, orders required, transfer incomplete if domestic relations action dismissed, notification to child support agency (R.C. 2151.235, R.C. 2151.236)
  2. Uniform Interstate Family Support Act (UIFSA) Jurisdiction (R.C. 2151.23(B)(3))
  3. Judicial appeal from administrative proceeding
  4. Continuing jurisdiction

E. Actions Involving Child Support

1. General provisions granting authority for certain persons/entities to file an action for child support (R.C. 2151.231 and R.C. 3111.78)
2. During pendency of abuse/neglect/dependency proceeding (R.C. 2151.33(B)(2))
3. R.C. 2151.36 Upon child being committed pursuant to R.C. Chapter 2151 and R.C. Chapter 2152)
4. Temporary support order during pendency of parentage action (R.C. 3111.111)
5. Order establishing parent child relationship may include support order (R.C. 3111.13)

6. R.C. Chapter 3115 (UIFSA)
7. Support action brought by grandparent providing support to child born to unmarried and un-emancipated minors (R.C. 3109.19)
8. Action by parent objecting to administrative support order (R.C. 3111.84)
9. Action against father for support once paternity acknowledgment finalized (R.C. 3111.29)

### **III. Case Management and Procedure**

- A. Ascertainment of personal jurisdiction (service of process)
- B. Determination of necessary parties and availability of parties
  1. Active military service (Service Members Civil Relief Act (SCRA))
    - a. Mandatory 90-day stay on request with communication of facts as to military duty and date of availability, and communication from commanding officer that leave not presently authorized
    - b. Discretionary on court's motion
    - c. Additional stays discretionary
  2. CSEA as a necessary party
  3. Consider need for special accommodations for disabled, language limited, etc.
- C. Establishment of discovery schedule
- D. Scheduling of future court events considering:
  1. Time necessary to obtain evidence to fully and fairly present case balanced with parents' and child's need for final resolution within reasonable time
  2. Applicable Supreme Court time guidelines (Sup.R. 39(A) and App. A, Form D)
  3. Ruling on pretrial motions
  4. Addressing discovery and evidentiary issues
    - a. Rules of Evidence applicable
    - b. Attorney-client privilege/waiver of privilege
    - c. Discovery disclosures, motions to compel and protective orders
    - d. Stipulations
    - e. Motions in limine
    - f. Authentication of payment record
    - g. Noncompliance with trial and discovery subpoenas
    - h. Protecting disclosure of Federal Tax Information (FTI) and CSEA records (26 U.S.C. 6103)
      - i. Privacy rights
      - ii. Confidentiality between Internal Revenue Service (IRS) and taxpayer
      - iii. Criminal penalties and civil damages for violations by state agencies, contractors, and cooperative agreement entities
      - iv. Policies and procedures to safeguard storage
      - v. FTI used as evidence
    - i. Standard of proof: preponderance of evidence
    - j. Special rules of evidence and procedure for Uniform Interstate Family Support Act (UIFSA) proceedings (R.C. 3115.316)
- E. Issuance of pre-trial and scheduling orders (to extent not covered by local rules of court)
  1. Discovery cut-off

2. Witness lists
  3. Presentation of testimony and order of witnesses; hostile witnesses
  4. Pre-marking of exhibits
  5. Time allotted
  6. Day-to-day-until-complete trials vs. non-consecutive trial dates/engaged counsel
  7. Statements/memoranda/briefs (to identify issues)
  8. Continuances
  9. Preparation for and attendance at trial
  10. Facilitation of Settlement: The Judicial Settlement Conference
    - a. Problem-solving approach and strategies (i.e. collaborative brainstorming, “divide and conquer” large complex problem into smaller solvable parts, building the agreement, etc.)
    - b. Value of involving the parties
    - c. Soft skills: active listening, reframing
    - d. Caucusing and communication of settlement positions
    - e. Economics of litigation process
    - f. Early neutral evaluation and mediation of child support
- F. Civil Rules of Procedure apply to support matters (incident to exception in proceedings to determine parent-child relationship)

#### **IV. Child Support Computation**

- A. Sole residential and shared parenting order worksheet (JFS 07768)
- B. Split parental rights and responsibilities worksheet (JFS 07769)
- C. Child support computation steps and basic information needed to complete worksheets
  1. Find income (R.C. 3119.01(C)(9))
    - a. Gross income (R.C. 3119.01(C)(12))
      - i. Total of all earned and unearned income from all sources during a calendar year whether or not taxable
      - ii. Exclusions from gross income (R.C. 3119.01(C)(12)(a)-(f))
    - b. Potential income if voluntarily un/underemployed (R.C. 3119.01(C)(17))
      - i. Imputed income if “fully employed” considering enumerated criteria (R.C. 3119.01(C)(17)(a))
      - ii. Imputed income from non-income producing assets (R.C. 3119.01(C)(17)(b))
      - iii. Prohibitions against determination of voluntary un/underemployment and imputation (R.C. 3119.05(I)) when:
        - (1) When parent receiving means-tested public assistance
        - (2) When parent approved for SSDI benefits because of mental or physical disability or parent is unable to work based on medical documentation that includes a physician’s diagnosis and opinion regarding disability and inability to work
        - (3) When parent has proven continuous and diligent efforts without success to obtain employment including temporary, part-time or at less than previous salary or wage



- (4) When parent complying with court-ordered family reunification efforts in child abuse, neglect, or dependency proceedings to extent compliance limits parent's ability to earn income
      - (5) When parent is institutionalized for more than 12 months with no other available income or assets
      - (6) If unjust or inappropriate and therefore not in the best interest of the child, court may impute potential income
    - iv. Prohibition against determining voluntary un/underemployment and imputation if parent is incarcerated (R.C. 3119.05 (J) i.e., confined under a sentence imposed for an offense or serving a term of imprisonment, jail, or local incarceration under R.C. 3119.05(Q) definition
    - v. Should "minimum wage" be imputed when no evidence of imputation factors (obligor does not appear)?
      - (1) What is minimum evidence required to determine un/underemployment?
      - (2) What if no evidence on "fully employed" criteria?
      - (3) 40 hours/week or less?
      - (4) Who has burden of establishing?
    - vi. Use of vocational experts
  - c. Special topics related to income
    - i. Self-generated income (R.C. 3119.01(C)(19))
    - ii. Sole proprietorship, Partnership, Sole Corporate Shareholder, Subchapter S Corporation, etc.
    - iii. Ordinary and necessary expenses (R.C. 3119.01(C)(15))
    - iv. Income averaging
      - (1) Bonuses, overtime and commissions (R.C. 3119.05(D))
      - (2) "Gross income" (R.C. 3119.01(C)(12))
    - v. Non-recurring or unsustainable income (R.C. 3119.01(C)(13))
    - vi. Evaluating undisclosed income
      - (1) Compare spending and lifestyle to stated income
      - (2) Standard of living
    - vii. Effect of parent's/child's receipt of Social Security disability/retirement/derivative benefits; Supplemental Security Income (SSI) - Disabled parent entitled to full credit against child support for Social Security payments received by child due to a parent's disability (Williams v. Williams, 88 Ohio St.3d 441 (2000))
    - viii. Evaluating military compensation (Leave and Earnings Statement (LES))
  - d. Verification of parents' current and past income and personal earnings required (R.C. 3119.05(A))
2. Adjust income for:
  - a. Multiple family obligations (R.C. 3119.05)
    - i. Standard adjustment for children of other relationships
    - ii. Per capita amount based on economic cost of raising children determined from basic schedule using that parent's income
  - b. Health insurance premiums (R.C. 3119.30(E)) - Total, actual out-of-pocket cost (R.C. 3119.30(E))
  - c. Court-ordered spousal support paid (R.C. 3119.05(B))
3. Determine income shares (R.C. 3119.01(C)(10))
4. Compute basic child support obligation
-

5. Adjust basic child support obligation for parenting time that equals or exceeds 90 overnights a year (R.C. 3119.051(A))
  - a. Automatic adjustment in form of credit
  - b. Can be eliminated if parenting time not exercised without just cause (R.C. 3119.051(B))
  - c. Check number of overnights in local standard parenting time order meets 90 overnights threshold
6. Add on to basic child support obligation - Child care cost (R.C. 3119.05(O))
  - a. Work, employment-training-related
  - b. Verifiable by credible evidence
  - c. Exclude reimbursed and subsidized cost
  - d. Capped at ODJFS statewide average costs based on age of child (newborn through 17 months; 18 months through 35 months; three through 5 years; six through 12 years)
  - e. When obligor's income subject to SSR, obligor's share of child care is equal to lower of obligor's income share or 50% of child care cost
  - f. Deduct tax credit whether or not claimed
7. Compute cash medical support
  - a. Defined as amount paid toward ordinary medical expenses (R.C. 3119.01(C)(1))
  - b. Based on number of children (R.C. 3119.30(C))
  - c. Per child amount based upon ODJFS National Medical Expenditure Survey (R.C. 3119.302(B))
  - d. Paid to obligee, or to ODJFS if Medicaid assignment (R.C. 3119.30(D))
8. Consider deviating from presumptive child support and cash medical support amounts for extended overnights in (R.C. 3119.231)
  - a. 91-146 overnights: if deviation granted, make findings; if deviation not granted, no findings necessary
  - b. 147 or more overnights: make findings whether or not deviation granted
9. Consider deviating from child support and cash medical support amount based on list of statutory factors (R.C. 3119.22)
  - a. Requires finding of "unjust or inappropriate and therefore not be in the best interest of the child" (R.C. 3119.22)
  - b. Factors to consider (R.C. 3119.23)
    - i. Special and unusual needs of children, including needs arising from physical and psychological condition of child
    - ii. Other court-ordered payments
    - iii. Extended parenting time or extraordinary costs associated with parenting time, including extraordinary travel expense when exchanging child for parenting time
    - iv. Financial resources and earning ability of child
    - v. Relative financial resources, including disparity in income between parties or households, other assets, and needs of each parent
    - vi. Obligee's income, if obligee's annual income is equal to or less than 100% of the federal poverty level
    - vii. Benefits either parent receives from remarriage or sharing living expenses with another person
    - viii. Amount of federal, state, and local taxes actually paid or estimated to be paid by a parent

- ix. Significant in-kind contributions such as direct payment for lessons, sports equipment, schooling, or clothing
  - x. Extraordinary work-related expense incurred by either parent
  - xi. Standard of living and circumstances of each parent and standard of living child would have enjoyed had marriage continued or had parents been married
  - xii. Educational opportunities that would have been available to the child had the circumstances requiring child support order not arisen
  - xiii. Responsibility of each parent for support of others including child with disabilities not subject to the support order
  - xiv. Post-secondary educational expenses paid for by parent for parent's own child regardless of whether child emancipated
  - xv. Costs incurred or reasonably anticipated to be incurred by parents in compliance with court-ordered reunification efforts in child abuse, neglect, or dependency cases
  - xvi. Extraordinary child care costs required for child that exceed maximum statewide average cost estimate, including extraordinary costs associated with caring for a child with specified physical, psychological, or education needs
  - xvii. Any other relevant factor
  - c. State specific facts and monetary or percentage value of deviation for child support agency to apply deviation during administrative review if still valid (R.C. 3119.63(B))
  - d. Consider, what is a fair, non-arbitrary way of assigning a monetary or percentage value to a deviation?
10. Child support under shared parenting (R.C. 3119.24)
- a. Must use worksheet amount unless that amount would be "unjust and inappropriate, based on extraordinary circumstances of the parents, or deviation factors contained in R.C. 3119.23
  - b. "Extraordinary circumstances" include:
    - i. Parenting time
    - ii. Ability of each parent to maintain adequate housing for children
    - iii. Each parent's expenses including child care, school tuition, medical expenses, dental expenses, and other expenses the court considers relevant
    - iv. Any other circumstances the court considers relevant
- D. Calculation of amount
- 1. Commercial software, ODJFS Ohio Child Support Calculator, <https://ohiochildsupportcalculator.ohio.gov/home.html>
  - 2. Completed worksheet
    - a. Amount of child support
    - b. Amount of cash medical support
- E. Case-by-case determination for certain income amounts
- 1. Combined income below \$8,400.00 (R.C. 3119.04) - Apply minimum support amount
  - 2. Combined income above \$336,000.00 (R.C. 3119.04)
    - a. Consider needs and standard of living of children and of parents
    - b. Compute basic amount no less than amount that would have been computed for combined gross income of \$336,000 (floor)

- c. Determine whether basic amount would be unjust or inappropriate and not in the best interest of the child, obligor or obligee to order that amount
    - d. Underlying economic data of the basic schedule does not support extrapolation
  - 3. Statutory minimum support order (R.C. 3119.06)
    - a. \$80/month
    - b. Court has discretion to award less or \$0 upon:
      - i. Non-residential parent's medically verified or documented physical or mental disability
      - ii. Non-residential parent's Institutionalization in a facility for persons with mental illness
      - iii. Other circumstances considered appropriate by court
    - c. Meant to reinforce obligation of all parents to contribute to support of their children
- F. Miscellaneous issues
- 1. Multiple support orders involving same parents and same children (different courts)
    - a. Total amount not commensurate with ability to pay
    - b. Aggregate order not to exceed amount had all children been addressed in one order (R.C. 3119.05 (L))
    - c. Is this a reason to deviate?
  - 2. Who is the obligor when parents share parenting?
    - a. If parenting time and parental income is equal but expenses not being equally shared
    - b. If parenting time equal but parental income not equal
  - 3. What criteria is used in determining best interest of a child (BIOC) in child support proceedings or matters?
  - 4. How will Affordable Care Act affect medical support?

## **V. Writing a Child Support Order**

- A. Importance of explaining rationale in findings and clarity in writing: Ambiguity and insufficient detail undermines public confidence in legal system and creates opportunity for interpretation and potential for conflict
- 1. Name child(ren) and date(s) of birth
  - 2. Designate child support obligor and obligee
  - 3. State effective date
  - 4. Make separate private education order, if appropriate (R.C. 3119.05(F))
  - 5. State two monthly amounts (child support, cash medical support)
  - 6. Impose processing charge (R.C. 3119.27(A))
  - 7. Designate health insurance obligor(s)
  - 8. Specify responsibility for uncovered health care expenses
  - 9. Designate party to be reimbursed for covered health care expenses
  - 10. Specify manner of securing future payments from income or assets: Court shall issue one or more of the following orders (R.C. 3121.02, R.C. 3121.03)
    - a. Income withholding notices (R.C. 3121.03(A))
      - i. Support must be withheld from income (R.C. 3121.02)
      - ii. Limitations to withholding
        - (1) Consumer Credit Protection Act 15 U.S.C. 1673(b)
        - (2) Unemployment compensation

- (3) Veteran's benefits
  - b. Deduction from financial account (R.C. 3121.03(B))
  - c. Bond order (R.C. 3121.03(C))
  - d. Seek work and order to notify CSEA (R.C. 3121.03(D))
- 11. Notices and Provisions required in support order
  - a. Content of general provision (R.C. 3121.27)
  - b. Statements concerning monthly payment (R.C. 3121.28)
  - c. Content of warning notice (R.C. 3121.29)
  - d. Obligor's date of birth and social security number (R.C. 3121.30)
  - e. Content of health insurance order (R.C. 3119.32)
- 12. Designate federal tax dependency exemption claimant(s) (R.C. 3119.82)
  - a. Dependency exemption is \$0 until 2025 but still necessary to designate which parent shall claim Child Tax Credit
  - b. Court shall designate according to parents' agreement
  - c. If parties do not agree, designate residential parent and legal custodian, unless court determines that award to non-residential parent furthers best interest of child (and payments are substantially current if changing a an order) considering:
    - i. Any net tax savings
    - ii. Relative financial circumstances and needs of the parents and children
    - iii. Amount of time spent by children with parents
    - iv. Eligibility of parents for earned income tax credits
    - v. Any other factor in children's best interest
  - d. Need for IRS Form 8332 (Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent) if awarded to non-residential parent
- 13. Must complete and attach computation worksheet to be in the record and final appealable order (Marker v. Grimm, 65 Ohio St.3d 139 (1992)).
- B. Appellate review of support orders
  - 1. Standard of review: Abuse of discretion
  - 2. Support proceedings not stayed pending appeal
  - 3. Importance of detailed findings to avoid reversal
- C. Bankruptcy
  - 1. Exception to automatic stay (11 U.S.C. 362(B)(2))
  - 2. Child support arrears a "domestic support obligation" (DSO) and not dischargeable

## **VI. Modification**

- A. Substantial change of circumstance necessary (R.C. 3119.79)
  - 1. Computation worksheet variance of 10% from existing order considered to be substantial change (other changes possible)
  - 2. If amount of order not adequate to meet medical needs, inadequate "coverage" shall be considered as substantial change of circumstances
  - 3. Change must not have been contemplated at time of prior order
- B. Aspects of support order that may be modified
  - 1. Amount of periodic support

2. Dependency exemption: Support payments must be “substantially current” for the year to be claimed (R.C. 3119.82)
3. Health care responsibilities
4. Possible re-designation of obligee/obligor

C. Retroactive modification prohibited (R.C. 3119.83, R.C. 3119.84)

## **VII. Termination**

A. Reasons to terminate support order and obligation

1. Statutory reasons (R.C. 3119.88(A))
  - a. Age of majority and no longer attending high school on full-time basis
  - b. Cease high school after age of majority
  - c. Termination condition met for 19 year old
  - d. Child’s death
  - e. Child’s marriage
  - f. Child’s enlistment in armed services
  - g. Child’s deportation
  - h. Change of legal custody
  - i. Child’s adoption
  - j. Obligor’s death
  - k. Grandparent report
  - l. Parents’ marriage to each other
2. Other reasons (R.C. 3119.88(B))

B. Termination procedure and issues (R.C. 3119.89)

1. Required notification to CSEA (R.C. 3119.87)
2. Arrearage collection
3. Overpayment and recoupment

C. Motion for relief from judgment: Termination based on vacating parental duty (R.C. 3119.961)

1. Not subject to limitations of Civ.R. 60(B)
2. Must be granted if genetic test shows obligor not the biological father, and child not adopted by obligor or conceived by artificial insemination (R.C. 3119.962(A)(1))
3. Must not be denied because of certain conditions if obligor did not know he was not the natural father (R.C. 3119.962(A)(2))
4. Must deny if obligor knew he was not the natural father before the occurrence of certain acts or conditions (R.C. 3119.962(B))
5. If relief from judgment granted court may issue order canceling arrears (R.C. 3119.964)

## **VIII. Collection and Enforcement**

A. Enforcement restricted when obligor receiving means tested public assistance (obligation accrues as arrearage (R.C. 3119.06))

B. Arrearage determinations

1. Proof of amount paid
  - a. CSEA record

- b. Other credible evidence
  2. Calculating amount due as of date certain (amount owed minus amount due at of end of month)
  3. Payments not made through CSPC (R.C. 3121.45)
  4. Credits and waivers
    - a. In-kind payment
    - b. Obligor's possession of child
    - c. Waiver and compromise of arrears assigned to state (O.A.C. 5101:12-60-70)
    - d. Forgiveness
    - e. Agreement of the parents as to arrears owed to parent
  5. Interest on arrearage (R.C. 3123.17, R.C. 3123.171)
  6. Minimum payment toward arrearage (R.C. 3123.21)
    - a. 20% of current support payment rebuttable presumption
    - b. Evidence of household expenditures, income variables, extraordinary health care issues and other reasons may be considered to rebut presumption
  7. Arrearage only cases – payment rebuttably presumed to be at least equal (R.C. 3121.36)
- C. Administrative
  1. Basics of the administrative process
    - a. Procedural due process
    - b. Right to judicial review
    - c. Governed by Ohio Administrative Code
  2. Overview of the child support agency
    - a. Federal mandate by Title IV-D of the Social Security Act (CSE program a joint federal/state/local effort)
    - b. Entity a county may designate as CSEA (R.C. 3125.10)
      - i. A free-standing agency reporting to county commissioners
      - ii. A division of county prosecuting attorney
      - iii. A arm of local common pleas court
      - iv. A division of combined county agency under Ohio Department of Job and Family Services (ODJFS) (vast majority)
    - c. Role of CSEA
      - i. Paternity establishment
      - ii. Child support order establishment, enforcement and termination
      - iii. Support enforcement including spousal support
      - iv. Child support modification
      - v. Establishment and enforcement of medical support
      - vi. Location of parent, employers, and sources of income
      - vii. Collection, disbursement, distribution of payments
      - viii. Provide other support services as agreed to by Local Rule or custom
    - d. IV-D and Non-IV-D classification of cases
      - i. IV-D: For persons who receive public assistance or complete application; subject to 66% federal reimbursement; eligible for all services
      - ii. Non-IV-D: For persons not receiving public assistance or who have not completed application; no federal reimbursement; not eligible for all services (e.g., federal tax offset service)
    - e. State Enforcement Tracking System (SETS)
    - f. Ohio Child Support Payment Central (CSPC)
      - i. Payment remittance by obligor or employer



- ii. Payment receipt by obligee (direct deposit, Ohio e-Quick Pay debit MasterCard)
    - g. Written cooperative agreement with courts, prosecutors, and law enforcement officials (R.C. 3125.14)
    - h. Role of Caseworkers and administrative hearing officers
      - i. What they can do
      - ii. What they cannot do
  - 3. Processes to dispute actions taken by CSEA leading to judicial review
    - a. Default (R.C. Chapter 3123)
    - b. Termination (R.C. 3119.88-92)
    - c. Modification review and adjustment (R.C. 3119.60-79)
    - d. Issuance of National Medical Support Notice (R.C. 3119.33- 41)
    - e. Request for establishment by grandparent (R.C. 3109.19)
    - f. Requests for establishment of order against father (R.C. 3111.29)
  - 4. Collection tools
    - a. Withholding or deduction notice (R.C. Chapter 3121)
    - b. Financial Account Access Restriction (R.C. 3123.24-38) and Financial Data Matching Program (R.C. 3121.74)
    - c. Professional License Restriction (R.C. 3123.41-50)
    - d. Driver's License Restriction (R.C. 3123.53-60)
    - e. Recreational License Restriction (R.C. 3123.62)
    - f. Liens (R.C. 3123.66-78)
    - g. Tax (federal, state) refund offset (intercept) and other funds (R.C. 3123.81-90) and Injured Spouse claims
    - h. Notice to Consumer Credit Reporting Agency (R.C. 3123.91-932)
    - i. Poster program (R.C. 3123.95-962)
    - j. Passport denial program (O.A.C. 5101:12-50-34)
- D. Judicial
- 1. Indirect civil contempt for non-payment of support
    - a. Unique, quasi-criminal proceeding involving challenge to court's authority commonly used in family law cases with their continuing orders
    - b. Basis
      - i. Inherent power of court, not constitutional grant or statute
      - ii. R.C. 2705.02 (list of various kinds of indirect contempt)
    - c. Procedure (R.C. 2705.031-2705.10)
    - d. Initiation of contempt proceeding
      - i. Motion for contempt and affidavit informing court of alleged violation
      - ii. Summons and order to appear (R.C. 2705.031(B)(2))
        - (1) Notices
        - (2) Service
    - e. Right to counsel
      - i. Court appointment for indigent alleged contemnor (Turner v. Rogers, 564 U.S. 431(2011))
      - ii. What constitutes indigency?
      - iii. Continuance to obtain counsel
    - f. Contempt hearing
      - i. Standard of proof: clear and convincing
      - ii. Right of alleged contemnor to present evidence
      - iii. Proof of willfulness not prerequisite
    - g. Defenses
-



- i. Right to prepare a defense
    - ii. Right to be heard
    - iii. Defense's inability to comply
    - iv. Substantial compliance excuses contempt charges
    - v. Violation of order may not be contempt
  - h. Finding of ability to pay
  - i. Character of Sanctions
    - i. Must be coercive (remedial/punitive aspects)
    - ii. Confinement or fine
    - iii. Attorney fees and court costs (R.C. 3109.05(C))
    - iv. Cannot permit escrowing, impounding or withholding child support for violation of parenting time, companionship or visitation order (R.C. 3109.05(D))
  - j. Purge (Coercive, determinate, reasonable)
    - i. Must be reasonable
    - ii. May be creative, e.g. attend parent education
    - iii. Cannot be what was already ordered
  - k. Contempt order not final unless sanction ordered
  - l. Imposition of Sentence upon failure to purge
    - i. Issuance of capias
    - ii. Alternatives to imposition
  - m. Consider problem-solving to address underlying reason for non-payment
- 2. Criminal non-support
  - a. State (R.C. 2919.21)
  - b. Federal (18 U.S.C. 228)
- 3. Provide opportunity for local agencies and counsel to assist obligors in meeting their support obligation

**IX. Uniform Interstate Family Support Act (UIFSA) (R.C. Chapter 3115)**

- A. Mechanism for child support establishment, modification and enforcement when parents reside in different states
- B. Initiating and responding states and tribunals (R.C. 3115.102)
  - 1. Duties of initiating tribunal (R.C. 3115.304)
  - 2. Duties and powers of responding tribunal (R.C. 3115.305)
  - 3. Duties of support enforcement agency (R.C. 3115.307)
- C. Jurisdiction over nonresident (R.C. 3115.201)
  - 1. Duration of personal jurisdiction (R.C. 3115.202)
  - 2. Simultaneous proceedings (R.C. 3115.204)
- D. Registration
  - 1. Enforcement
    - a. Jurisdiction (R.C. 3115.206)
    - b. Procedure (R.C. 3115.602)
    - c. Effect (R.C. 3115.603)
  - 2. Modification
    - a. Jurisdiction (R.C. 3115.613, R.C. 3115.615)
    - b. Procedure (R.C. 3115.609, R.C. 3115.616)
    - c. Effect (R.C. 3115.610)

- d. Continuing exclusive jurisdiction (CEJ) (R.C. 3115.205)
- 3. Contest and confirmation of order
  - a. Contest (R.C. 3115.506, R.C. 3115.606, R.C. 3115.607)
  - b. Confirmation (R.C. 3115.608)
  - c. Effect of registered order (R.C. 3115.603 and R.C. 3115.610)
- E. Establishment of paternity and/or an initial support order (R.C. 3115.401)
  - 1. Pleadings and accompanying documents to establish/register (R.C. 3115.311)
  - 2. Establishment of support order (R.C. 3115.401)
  - 3. Notice of registration of order (R.C. 3115.605)
- F. Significant provisions of UIFSA statutes
  - 1. Choice of law (R.C. 3115.604)
  - 2. Determination of controlling order (R.C. 3115.207)
  - 3. Special procedural and evidentiary rules (R.C. 3115.316)
  - 4. Long-arm jurisdiction

## **Custody**

### **Educational Content:**

#### **I. Meaning of Parental Rights and Responsibilities (APRR)**

- A. Parental rights and responsibilities are a compilation of rights and responsibilities not clearly defined by statute
- B. Equivalent to former phrase “custody and control”; person with “custody” has “right to ultimate legal and physical control” of child (Fisher v. Hasenjager, 116 Ohio St.3d 53, 2007-Ohio-5589 and Braatz v. Braatz, 85 Ohio St.3d 40, 1999-Ohio-203)
- C. Typically associated rights (non-exhaustive list):
  - 1. To physical possession
  - 2. To control and manage child’s earnings and property
  - 3. To teach moral and ethical standards
  - 4. To discipline
  - 5. To consent to and make decisions concerning medical treatment, education, worship and religious training, activities, etc.
  - 6. To control children’s associations
  - 7. To provide information necessary to assert above right
- D. Typically associated responsibilities:
  - 1. To ensure that child is properly fed, clothed and provided with necessities of life (basic needs) and health care
  - 2. To provide safe environment
  - 3. To pay for child’s commission of tortuous acts (R.C. 2307.70, R.C. 3109.09, R.C. 3109.10, R.C. 4507.07)
  - 4. To ensure a child’s education
- E. Consider child’s right (of fundamental importance): To a meaningful relationship with both parents and to have those relationships protected.

#### **II. Subject Matter Jurisdiction**

- A. Original jurisdiction
  - 1. R.C. 2151.23(A)(2) – The juvenile court has exclusive original jurisdiction to determine the custody of any child not a ward of another court of this state.
  - 2. 2151.23 (F)(1) – The juvenile court shall exercise its jurisdiction in child custody matters in accordance with sections 3109.04...
  - 3. R.C. 3105.21 – Upon a complaint for divorce, annulment, or legal separation, the Court shall make an order for disposition and care of the children of the marriage which is in their best interest according to 3109.04.
  - 4. R.C. 3109.11 (Visitation for Relative for Deceased Parent) – If Mother and Father are not married and parent dies, any relative of the deceased can request visitation in the county where the child resides. Visitation must be in the best interest of the child according to R.C. 3109.051.
  - 5. R.C. 3109.12 (Visitation – Child of unmarried mother – If unmarried, Mother’s relatives may file for visitation. Visitation must be in the best interest of the child

acc. to 3109.051.. If Father is established by law, Father's relatives can file for visitation. Visitation must be in the best interest of the child acc. to R.C. 3109.051.

6. R.C. 3111.13(C) (APRR or Visitation for father after parentage established) – Father can file for allocation of parental rights or visitation in a separate action after an order of support is established.

B. Certification jurisdiction

1. R.C. 3109.04(D) (2)
  - a. If it is in the best interest of the child for neither parent to be designated as the residential parent, the child may be committed to a relative or the case may be certified to juvenile court.
  - b. Juvenile court has exclusive jurisdiction upon certification by domestic relations court.
  - c. In cases involving certification to juvenile court, the statute does not authorize a provisional order granting custody to a children's services agency. (*State, ex rel. Richland Cty. Children's Services v. Richland Cty. Court of Common Pleas*, 2017-Ohio-9160).
2. R.C. 3109.06
  - a. Custody stemming from any court with APRR jurisdiction
    - i. That finds parents unsuitable to have APRR, unsuitable to provide place of residence and be legal custodian
    - ii. Court may certify to juvenile court without juvenile court consent
  - b. Custody stemming from any court with APRR or support jurisdiction
    - i. On motion of interested party or court's own motion
    - ii. Court can certify to juvenile court with consent of juvenile court
    - iii. Exclusive jurisdiction to juvenile court
3. R.C. 2111.46
  - a. Where guardianship of a minor is terminated by probate court and no successor guardian is appointed and the probate court finds that the minor is without proper care, the probate court must certify the case to juvenile court for further proceedings
  - b. Exclusive jurisdiction on certification
4. R.C. 3109.051 (N) Juvenile court has exclusive jurisdiction to enter orders in certified cases
5. Juv.R. 10 Certified case are to be treated as complaint

C. Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (R.C. Chapter 3127)

1. Regulation of jurisdiction between states to make and modify custody and visitation determinations.
2. **State of Ohio [R.C. 3127.15]**
  - a. State of Ohio has jurisdiction to make an initial custody determination if one of the following applies:
    - i. Ohio is *child's home state at commencement of proceeding*,
      - i. OR
    - ii. *Ohio was child's home state within 6 months before commencement of proceedings; and*
    - iii. Child is absent from the state, but a *parent or person acting as a parent continues to live in this state.*
3. **UCCJEA Affidavit [R.C. 3127.23(a)]**

- a. (A) Each party in a child custody proceeding, *in the party's first pleading* or in an *affidavit* attached to that pleading, *shall give information if reasonably ascertainable under oath as to the child's present address or whereabouts, the places where the child has lived within the last five years, and the name and present address of each person with whom the child has lived during that period.*
    - i. In this pleading or affidavit, each party also shall include all of the following information:
      - i. History of the prior case and/or proceedings
      - ii. Any current proceedings regarding custody, domestic violence, protection orders, abuse/neglect/dependency, termination of parental rights, and/or adoptions.
      - iii. Any person who has physical custody of the child and is not a party to the proceeding, any person who claims to be the child's parent, any party who has parenting time rights.
  - b. Note on Subject Matter Jurisdiction
    - i. *Old Law:* Under the prior statute, R.C. 3109.27, if a party failed to file a UCCJEA affidavit at the initial onset of the case, then it rendered a Court to lack subject matter jurisdiction.
    - ii. *New Law:* R.C. 3109.27 was repealed and replaced with R.C. 3127.23 and overruled by *In re Complaint for Writ of Habeas Corpus Goeller*, 2004 Ohio 5579 (Ohio Supreme Court). No subject matter defect.
- D. Juvenile Court Prohibited from Exercising Jurisdiction [R.C. 2151.233]**
- 1. The juvenile court shall not exercise jurisdiction under division (A) (2), (A) (11), or (B) (4) of section 2151.23 of the Revised Code or section 2151.231 of the Revised Code to determine custody or support regarding a child if any of the following apply:
    - a. (A) The *child's parents are married.*
    - b. (B) The *child's parents are not married* and there is an *existing order for custody or support* regarding the child or the child's sibling over which *the juvenile court does not have jurisdiction.*
    - c. (C) The *determination* is *ancillary* to the parents' *pending action for divorce, dissolution of marriage, annulment, or legal separation.*

### **III. Venue – Where a juvenile custody case should be filed**

- A. Juvenile Rule 10(A) - Any person may file a complaint to have determined the custody of a child not a ward of another court of this state, and any person entitled to the custody of a child and unlawfully deprived of such custody may file a complaint requesting a writ of habeas corpus. Complaints concerning custody shall be filed in the county where the child is found or was last known to be.
- B. R.C. 2151.27 (D) - Any person with standing under applicable law may file a complaint for the determination of any other matter over which the juvenile court is given jurisdiction by section 2151.23 of the Revised Code. The complaint shall be filed in the county in which the child who is the subject of the complaint is found or was last known to be found.
- C. Venue defects - Venue defects are generally corrected by using Juv. Rule 11 and ORC § 2151.271.
  - 1. Juvenile Rule 11(A) - If the child resides in a county of this state and the proceeding is commenced in a court of another county, that court, on its own motion or a motion of a party, may transfer the proceeding to the county of the

child's residence upon the filing of the complaint or after the adjudicatory or dispositional hearing for such further proceeding as required. The court of the child's residence shall then proceed as if the original complaint had been filed in that court. Transfer may also be made if the residence of the child changes.

2. 2151.271 - Except in a case in which the child is alleged to be a serious youthful offender under section 2152.13 of the Revised Code, if the child resides in a county of the state and the proceeding is commenced in a juvenile court of another county, that court, on its own motion or a motion of a party, may transfer the proceeding to the county of the child's residence upon the filing of the complaint or after the adjudicatory, or dispositional hearing, for such further proceeding as required. The court of the child's residence shall then proceed as if the original complaint had been filed in that court. Transfer may also be made if the residence of the child changes.
3. Certified copies of all legal and social records pertaining to the case shall accompany the transfer.
4. Juvenile Rule 2 (HH) – legal residence
5. Legal residence - R.C. § 2151.06 - Residence or legal settlement - Under sections 2151.01 to 2151.54, inclusive, of the Revised Code, a child has the same residence or legal settlement as his parents, legal guardian of his person, or his custodian who stands in the relation of loco parentis.

#### **IV. Case Management and Pre-trial Procedure**

- A. Ascertainment of personal jurisdiction (service of process)
  1. **Juvenile Rule 16 - Process: service – Except as otherwise provided in these rules. Summons shall be served as provided in Civil rules 4(A), (C), and (D), 4.1, 4.2, 4.3, 4.5, and 4.6**
  2. Request to serve opposing party(s) with a summons and copy of the pleadings
  3. **Juv. Rule 2 Definitions**
    - a. (Y) **“Party”** means a child who is the subject of a juvenile court proceeding, the child's spouse, if any, the child's parent or parents, or if the parent of a child is a child, the parent of that parent, in appropriate cases, the child's custodian, guardian, or guardian ad litem, the state, and any other person specifically designated by the court.
  4. **Unknown father – Publication [Juv. R. 16(A)]**
    - a. In re Z.H., 2013-Ohio-3904, 995 N.E.2d 295 (9<sup>th</sup> Dist.)
      - i. Use of child's initials on posted notice of complaint to adjudicate child abused, neglected, and dependent, together with date of birth, was insufficient to accomplish notice reasonably calculated, under circumstances, to actually inform biological father of pendency of action, and thus, did not comport with due process; rather, inclusion of mother's full name, together with child's full name, would provide adequate notice, insofar as child's surname was maternal grandfather's and was different than mother's, and inclusion of mother's full name was most reasonably calculated to apprise father of action, since caseworker actually used mother's name to inquire whether he might be father of child.
    - b. In re R.P. 2012 Ohio 4799 (9<sup>th</sup> District)
      - i. Agency claims father is unknown. Thus, perfected service by John Doe publication. However, father had contacted the agency and indicated

- that he was the father. Agency admitted to these facts. Thus Court found no service perfected on father and remanded case.
- ii. A lack of service of summons will render a custody order invalid and void ab initio.
- B. Determination of whether to exercise subject matter jurisdiction pursuant to UCCJEA ((R.C. 3127.23); Parenting Proceeding Affidavit) (See above)
- C. Determination of necessary parties and availability of parties
- 1. Joinder of necessary parties (Civ.R. 18 – 21)
  - 2. Active military service (Servicemembers Civil Relief Act (SCRA))
    - a. Mandatory 90-day stay on request with communication of facts as to military duty and date of availability, and communication from commanding officer that leave not presently authorized; appointment of counsel
    - b. Discretionary on court's motion
    - c. Additional stays discretionary
  - 3. Consider need for special accommodations for disabled, language limited, etc.
- D. Court is required to adopt standard parenting time guidelines (R.C. 3109.051(F)(2))
- E. Ordering of parent education attendance and completion, if mandated by local rule (online vs. in-person)
- F. Motions for temporary orders
- 1. **R.C. 3109.043**
    - a. In any proceeding pertaining to the allocation of parental rights and responsibilities for the care of a child, when requested in the complaint, answer, or counterclaim, or by motion served with the pleading, upon satisfactory proof by affidavit duly filed with the clerk of the court, the court, without oral hearing and for good cause shown, may make a temporary order regarding the allocation of parental rights and responsibilities for the care of the child while the action is pending.
  - 2. **Juvenile Rule 13**
    - a. **(A) Temporary Disposition.** Pending a hearing on a complaint, the court may make such temporary orders concerning the custody or care of a child who is the subject of the complaint as the child's interest and welfare may require.
    - b. **(B) Temporary Orders.** (1) Pending a hearing on a complaint, the judge or magistrate may issue temporary orders with respect to the relations and conduct of other persons toward a child who is the subject of the complaint as the child's interest and welfare may require.
- G. Making of court appointments/referrals/orders to submit; and set report due dates for:
- 1. Mediation (R.C. 3109.052) authority to order in visitation cases; parallel process to litigation
  - 2. Early neutral evaluation
  - 3. Investigation (character, family relations, past conduct, earning ability, financial worth) (R.C. 3109.04(C)); Civ.R. 75(D)
  - 4. Examination (medical, psychological, psychiatric) (R.C. 3109.04(C))
  - 5. Guardian ad litem (R.C. 3109.04(B)(2)(a), Sup.R. 48, Civ.R.75(B)(2))

6. Child's counsel (Civ.R. 75(B)(2))
- H. Establishment of discovery schedule (Civ.R. 26-37)
- I. Scheduling of future court events considering
  1. Time necessary to obtain evidence to fully and fairly present case balanced with parents' and child's need for final resolution within reasonable time
  2. Applicable Supreme Court time guidelines (Sup.R. 39(A) and App. A, Form D)
- J. Addressing of discovery and evidentiary issues
  1. Rules of Evidence apply
  2. Privileged communications (R.C. 2713.02)
    - a. Attorney/client
    - b. Physician/patient
    - c. Clergy
    - d. Counselor, social worker and therapist
    - e. Psychologist (R.C. 4732.19)
    - f. Mediator
    - g. Waiver of privilege, mandatory reporters, etc.
  3. Discovery disclosures, motions to compel and protective orders
  4. Stipulations
  5. Motions in *limine*
  6. *In camera* inspection of records.
  7. Noncompliance with trial and discovery subpoenas
- K. Issuance of pre-trial and scheduling orders (to extent not covered by local rules of court) pre-trial and scheduling orders are discretionary
  1. Discovery cut-off
  2. Witness lists
  3. Presentation of testimony and order of witnesses; hostile witnesses; taking witnesses out of order
  4. Pre-marking of exhibits, adequate copies
  5. Time allotted
  6. Day-to-day-until-complete trials vs. non-consecutive trial dates/engaged counsel
  7. Statements/memoranda/briefs (to identify issues)
  8. Continuances
  9. Preparation for and attendance at trial
- L. Special consideration of issues related to self-represented parties
  1. Right to self-representation and access to justice
    - a. Historical perspective
    - b. Extent to which the court may accommodate
      - i. Customer service attitude
      - ii. Availability of self-help forms; self-help centers; websites
      - iii. Simple, easy-to-understand language in court-generated documents
      - iv. Explaining court procedures
      - v. Legal information vs. legal advice
  2. How the self-represented party experiences the court process
    - a. Informed by perceptions, values, attitudes, language and communication, customs and religious beliefs
    - b. Lack of knowledge of court procedures



- i. How far can/should a court go to inform about process/procedure?
      - ii. When other parent represented – “leveling the playing field”?
    - c. Outcomes (positive/negative) of the process
      - i. Effect in individual case
      - ii. Public perception of judicial system
  - M. Facilitating Settlement: Consider the following:
    - 1. Determine appropriateness of judicial officer participation
    - 2. Problem-solving approach and strategies (e.g. collaborative brainstorming, “divide and conquer” large complex problem into smaller solvable parts, building the agreement, etc.)
    - 3. Value of involving the parties
    - 4. Soft skills: Active listening, reframing
    - 5. Caucusing and communication of settlement positions
    - 6. Future-focused; interest-based; reality testing of proposed solutions
    - 7. Economics of litigation process
  - N. Goal of case management and pre-trial procedure
    - 1. Less antagonistic, efficient court processes/procedures to minimize emotional trauma and financial hardship caused by uncertainty and parental conflict;
    - 2. Adversarial system ill-suited to discovering subjective truth of situation and harmful for parents to become adversarial opponents
- V. Criteria to Consider/Ignore When Deciding Legal Custody and Allocating Parental Rights and Responsibilities**
- A. Child-centered approach
    - 1. Doctrines of *Parens Patriae* and Parental Liberty: Difference in focus/tension between State’s responsibility to protect a child, and the parents’ fundamental right to care, custody and control of their own children.
    - 2. “Best Interest of the Child” present-day legislative controlling principle
      - a. Subjective standard
      - b. Subject to personal assumptions and biases
    - 3. Equal parental rights at the outset of case (R.C. 3109.03 and R.C. 3109.042)
      - a. Ideology shifting to gender-neutrality
      - b. Does not mean equal parenting time
  - B. What must not be considered
    - 1. Parent preference because of financial status (R.C. 3109.04(F)(3))
    - 2. Written and recorded statements of child (R.C. 3109.04(B)(3) and R.C. 3109.051(C))
  - C. What must be considered
    - 1. Statutory factors - Best Interest of the Child (BIOC)
      - a. R.C. 3109.04(F)(1): When deciding legal custody and allocating parental rights and responsibilities
      - b. R.C. 3109.04(F)(2) and R.C. 3119.23: When considering granting shared parenting, in addition to (R.C. 3109.04(F)(1))
      - c. R.C. 3109.051(D): When granting parenting time, companionship or visitation rights
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2. Special interdisciplinary topics related to deciding the child's best interest (an understanding and working knowledge of)
  - a. Infant, child and adolescent stages of development, and attachment
  - b. Communication and inter-parental conflict
  - c. Parenting and co-parenting abilities
  - d. Never-married parents
    - i. No prior relationship: Gradual adjustment ("phased-in")
    - ii. Long-term relationships
  - e. Managing high conflict personalities
  - f. When children refuse contact: Estrangement and parental alienation
  - g. Substance Abuse and Dependency and its effects
  - h. Basic mental health (including personality disorders) of adults and children
  - i. Value to child of meaningful father-child, mother-child relationships and shared parenting
  - j. Diagnostic and Statistical Manual of Mental Disorders (DSM-V) –What does/doesn't it mean
  - k. Psychotherapies and the therapeutic process (systems, psychosocial and pharmacological)
  - l. Family dynamics, blended families and step-parent conflict
  - m. Parent reunification (e.g., alienated parent or child)
  - n. Special needs children
  - o. Relocation and long-distance parenting
  - p. Trauma and Domestic Abuse –rebuttal of presumption
  - q. Psychological testing in child custody evaluations
  - r. Safety and supervised visitation/supervised exchanges and neutral sites
    - i. The need for a professional service provider vs. family/friend/neighbor/faith-based overseers
    - ii. Risk assessment (when is it really necessary?)
    - iii. Advantages to both parties
  - s. Social media and modern communication (virtual parenting?)
    - i. "Skype", texting, e-mail, "Facebook", etc.
    - ii. Useful or harmful?
    - iii. On-line parenting communication tools (Our Family Wizard etc.)
  - t. Parenting skills and parenting skills training programs
  - u. Mental health professionals
    - i. Licensure of psychologists (Ph.D, Ed.D, Psy.D); social workers and counselors (LPCC, LPC, LISW, LSW)
    - ii. Ethical obligations and standards of professions; confidentiality of communications
    - iii. Exceptions to confidentiality; child abuse/neglect (R.C. 2151.421(A)(1))
  - v. Effective parent education programs (R.C. 3109.053)
    - i. Never married parents
    - ii. Consider children education programs
  - w. Giving voice to the child (R.C. 3109.04(F)(1)) ("a voice but not a choice") - Either party may file a motion for the Court to appoint a guardian ad litem, or a guardian can be appointed upon the Court's own motion..
    - i. R.C. 3109.04(B)(2)(a).
    - ii. Superintendence Rule 48
    - iii. A guardian ad litem is usually an attorney (but does not have to be) who is appointed to represent the best interest of the minor children.

- iv. Common duties of a GAL: Superintendence Rule 48
  - i. Interviews both parents
  - ii. Interviews the child
  - iii. Observes each parent with child
  - iv. Interviews family members and other key witnesses
  - v. Speaks to school officials
  - vi. Attends court hearings and depositions
  - vii. Reviews discovery
  - viii. Reviews parents' medical and mental health records
  - ix. May recommend psychological examination be conducted of child
- v. After the GAL completes his/her investigation, the guardian ad litem will author a GAL report. The report is filed with the Court at least 7 days prior to trial. The parties and Court will review the report. The report is a set of recommendations by the guardian ad litem as to what is in the child(ren)'s best interest.
- vi. If the GAL is an attorney, then the GAL may also file pleadings, motions, and other documents in support of the minor children's best interest.
- vii. The Court will have to allocate GAL fees between the parties.
- x. In camera child interview
  - i. Upon the Court's own motion or upon motion by either party, the Court will interview the minor child(ren) in chambers regarding the child's wishes and concerns with respect to the allocation of parental rights and responsibilities. R.C. 3109.04(B)(1)
  - ii. Sufficient reasoning ability - Before a Court conducts the in camera interview, the Court must ascertain whether the child has sufficient reasoning ability to express the child's wishes or concerns with respect to the allocation. R.C. 3109.04(B)(2)(b)
  - iii. 3109.04(F)(1) In determining the best interest of a child pursuant to this section, whether on an original decree for the allocation of parental rights and responsibilities or modification of a decree, the court shall consider the following factors:... (F)(1)(b) If the Court has interviewed the child in chambers regarding the child's wishes and concerns, the wishes and concerns of the child as expressed to the court
  - iv. 3109.04 (B)(1) and (2)(c) – “in chambers”
  - v. Making a record - *The requirement that the in camera interviews be recorded is designed to protect the due-process rights of the parents. **The due-process protection is achieved in this context by sealing the transcript of the in camera interview and making it available only to the courts for review. This process allows appellate court to review the in camera interview proceedings and ascertain their reasonableness, while still allowing the child to “feel safe and comfortable in expressing his opinions openly and honestly, without subjecting the child to any additional psychological trauma or loyalty conflicts.”** Lawson v. Lawson, 2013-Ohio-4687, ¶¶ 54-55 (5<sup>th</sup> Dist.)*
  - vi. GAL and/or child's attorney participation - 3109.04 (B)(2)(c) The interview shall be conducted in chambers, and no person other than the child, the child's attorney, the judge, any necessary court personnel, and, in the judge's discretion, the attorney of each parent shall be permitted to be present in the chambers during the interview.
  - vii. Findings required when not in BIOC to determine
  - viii. Age/competency/reasoning ability

- ix. interview procedure and skills
- x. Is it “testimony”?
- xi. Timing Confidentiality, sealing, and right of access to record (varies among appellate districts)
- xii. Advisability of interview and weighing potential harm from process (the emotional burden of public expression; value of being heard vs. putting child in center of battlefield)
- xiii. Apply knowledge of how to talk to child and age appropriate consideration regarding decisions regarding child
- xiv. Individual education plans and 504 Plans for children with disabilities
- y. Evaluations, examinations and reports
  - 1. GAL (R.C. 3109.04(B); (Sup.R. 48(F))
  - 2. Expert reports; forensic custody evaluations
    - a. The custody evaluation process
      - i. Frameworks used to inform custody and access determination: Attachment, risk vulnerability, resiliency, systems, conflict, developmental
      - ii. Balancing helpfulness of assessment with high cost and time- consuming delay
      - iii. Child custody evaluation guidelines
      - iv. When is an evaluation really necessary?
      - v. How to critique an evaluation
    - b. Content of report
    - c. Relevance and reliability (Evid.R. 702, Daubert v. Merrill-Dow Pharmaceuticals, 509 U.S. 579 (1993))
    - d. Home investigations (R.C. 3109.04(C))
  - 3. Medical, psychological, psychiatric professionals (R.C. 3109.04(C))
  - 4. Mediation outcome (R.C. 2710.06(B)(1))
  - 5. Standard of proof: Preponderance of evidence (Ohio Jury Instructions, CV Section 303.05 (Rev. Dec. 11, 2010))
  - 6. Challenge: The practical application of the broad legal standard of “best interest of child” into terms that foster an individual child’s psychological and developmental well-being based on social science research, community standards, and individual nuance (a complex and difficult issue)
  - 7. Court policy and/or local rules regarding child as witness
  - 8. Protecting sensitive and private information vs. public access (sealing records, confidential family files) (Sup.R. 44 and Sup.R. 45)

## **VI. Communication with Children**

- A. Knowledge of developmental stages
  - B. Age-appropriate communication skills
  - C. Interview skills
  - D. Techniques by judge to enhance communication (e.g., child friendly atmosphere)
  - E. Right for child to be present and other accommodations of child
-

- F. Cultural and ethnicity considerations

**VII. Making the Decision for initial allocation and Writing the Order**

- A. **Legal background: An unmarried mother is the sole legal custodian of her child by operation of law. R.C. 3109.042**

1. *An unmarried female who gives birth to a child is the sole residential parent and legal custodian of the child until a court of competent jurisdiction issues an order designating another person as the residential parent and legal custodian. A court designating the residential parent and legal custodian of a child described in this section shall treat the mother and father as standing upon an equality when making the designation.*

- B. Two ways to allocate parental rights and responsibilities: Sole Custody or Shared Parenting

- C. Shared parenting to parents: Sharing of all or some of the aspects of physical and legal care of child evolved from “joint custody” - the trend (R.C. 3109.04(A)(2))

1. Defined: where both parents are deemed the child(ren)’s residential parent and legal custodian.
  - a. Both parents share decision making (education, medical, faith/religious upbringing, extracurricular activities)
  - b. Note: A shared parenting plan does not mean each parent has possession of the child 50% of the time. Legal custody rights are completely separate from the possession schedule. Under a shared parenting plan, the parties will exercise a possession schedule; however, the possession schedule will be based on a best interest standard.
2. Legal requirements for shared parenting
  - a. At least one parent must file pleading or motion requesting shared parenting. (R.C. 3109.04(G)). If not motion for SPP, then Court must give sole custody to one parent.
  - b. Requesting parent must also file shared parenting plan at least 30 days prior to the hearing (R.C. 3109.04(G)); waiver
  - c. Court may order other parent to file a shared parenting plan (R.C. 3109.04(G))
  - d. Note: A court cannot create a shared parenting plan.
  - e. Court must follow provisions of (R.C. 3109.04(D)) to determine which shared parenting plan is in the best interest of the child
  - f. Consider factors enumerated in (R.C. 3109.04(F)(1) and (2))
    - i. (F)(2) In determining whether shared parenting is in the best interest of the children, the court shall consider all relevant factors, including, but not limited to, the factors enumerated in division (F)(1) of this section, the factors enumerated in section 3119.23 of the Revised Code, and all of the following factors:
      - i. (a) The ability of the *parents to cooperate and make decisions jointly*, with respect to the children;
      - ii. (b) The ability of each parent to *encourage the sharing of love, affection, and contact between the child and the other parent*;
      - iii. (c) Any *history* of, or *potential* for, *child abuse*, spouse abuse, other *domestic violence*, or *parental kidnapping* by either parent;

- iv. (d) The *geographic proximity* of the parents to each other, as the proximity relates to the practical considerations of shared parenting;
- v. (e) The *recommendation of the guardian ad litem* of the child, if the child has a guardian ad litem.
- ii. (F)(1) In determining the best interest of a child pursuant to this section, whether on an original decree allocating parental rights and responsibilities for the care of children or a modification of a decree allocating those rights and responsibilities, the court shall consider all relevant factors, including, but not limited to:
  - i. (a) The *wishes of the child's parents* regarding the child's care;
  - ii. (b) If the *court has interviewed the child* in chambers pursuant to division (B) of this section regarding the child's wishes and concerns as to the allocation of parental rights and responsibilities concerning the child, *the wishes and concerns* of the child, as expressed to the court;
  - iii. (c) The *child's interaction and interrelationship* with the child's parents, siblings, and any other person who may significantly affect the child's best interest;
  - iv. (d) The child's *adjustment to the child's home, school, and community*;
  - v. (e) The *mental and physical* health of all persons involved in the situation;
  - vi. (f) The *parent more likely to honor and facilitate court-approved parenting* time rights or visitation and companionship rights;
  - vii. (g) *Whether either parent has failed to make all child support* payments, including all arrearages, that are required of that parent pursuant to a child support order under which that parent is an obligor;
  - viii. (h) *Prior convictions*. Whether either parent or any member of the household of either parent previously has been *convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child*; whether either parent, in a case in which a child has been adjudicated an abused child or a neglected child, previously has been determined to be the perpetrator of the abusive or neglectful act that is the basis of an adjudication; *whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to a violation of [section 2919.25 of the Revised Code](#) or a sexually oriented offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding; whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to any offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding and caused physical harm to the victim in the commission of the offense*; and whether there is reason to believe that either parent has acted in a manner resulting in a child being an abused child or a neglected child;
  - ix. (i) *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 an order of the court;
- x. (j) Whether either *parent has established a residence*, or is planning to establish a residence, *outside this state*.
  - iii. Approve plan if in best interest of the child
  - g. Plan must include (R.C. 3109.04(G)):
    - i. Physical living arrangements
    - ii. Child Support obligations
    - iii. Provision for child's medical and dental care
    - iv. School placement
    - v. Physical location of child during legal and school holidays, and other days of special importance
  - h. Each parent is "residential parent", "residential parent and legal custodian", "custodial parent" (R.C. 3109.04(L)(6)) Caution: IRS conflict with use of term, "custodial parent" (R.C. 3109.04(L)(7))
  - i. Determine appropriate language to address all factors relevant to the care of the children (school placement, tax issues, receiving public assistance not affecting designation of each)
  - j. Each plan is highly individualized
    - i. Does not mean equal access/equal decision-making
    - ii. Often just a name
  - D. Sole Custody: Allocation to one parent designated as "residential parent and legal custodian": One parent awarded all "rights" to make decisions that relate to child's health, education, religion, residence and welfare and other parent afforded "right of access" only - traditional model (R.C. 3109.04(A)(1))
    - a. When:
      - i. Neither parent requests shared parenting (R.C. 3109.04(A)(1))
      - ii. When one parent requests but does not file a shared parenting plan (R.C. 3109.04(A)(1))
      - iii. When one parent requests and files a shared parenting plan that is not in Best Interest of Child (BIOC) (R.C. 3109.04(A)(1))
    - b. Consider factors enumerated in (R.C. 3109.04(F)(1))
    - c. In determining the best interest of a child pursuant to this section, whether on an original decree allocating parental rights and responsibilities for the care of children or a modification of a decree allocating those rights and responsibilities, the court shall consider all relevant factors, including, but not limited to:
      - i. (a) The *wishes of the child's parents* regarding the child's care;
      - ii. (b) If the *court has interviewed the child* in chambers pursuant to division (B) of this section regarding the child's wishes and concerns as to the allocation of parental rights and responsibilities concerning the child, *the wishes and concerns* of the child, as expressed to the court;
      - iii. (c) The *child's interaction and interrelationship* with the child's parents, siblings, and any other person who may significantly affect the child's best interest;
      - iv. (d) The child's *adjustment to the child's home, school, and community*;
      - v. (e) The *mental and physical* health of all persons involved in the situation;
      - vi. (f) The *parent more likely to honor and facilitate court-approved parenting time rights or visitation and companionship rights*;

- vii. (g) *Whether either parent has failed to make all child support* payments, including all arrearages, that are required of that parent pursuant to a child support order under which that parent is an obligor;
  - viii. (h) ***Prior convictions.*** Whether either parent or any member of the household of either parent previously has been ***convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child***; whether either parent, in a case in which a child has been adjudicated an abused child or a neglected child, previously has been determined to be the perpetrator of the abusive or neglectful act that is the basis of an adjudication; ***whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code*** or a sexually oriented offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding; ***whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to any offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding and caused physical harm to the victim in the commission of the offense***, and whether there is reason to believe that either parent has acted in a manner resulting in a child being an abused child or a neglected child;
  - ix. (i) ***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 an order of the court;
  - x. (j) Whether either ***parent has established a residence***, or is planning to establish a residence, ***outside this state***.
- d. The Parenting Plan
- i. Age and developmentally appropriate parenting time schedules vs. standardized schedules (R.C. 3109.051(A), R.C. 3109.051(F)(2))
  - ii. Importance of detail and clarity in writing orders
    - i. Ambiguity and insufficient detail create opportunity for control and exacerbate conflict
    - ii. Multiple audiences (schools, service providers, etc.)
    - iii. To be read by another judicial officer in the future
  - iii. Content of orders (comprehensive; checklist)
    - i. Regular/school year schedule
    - ii. Holiday, vacation, school break, days of special importance schedule
    - iii. Scheduling, participation, and payment for school and extracurricular activities, conferences, activities
    - iv. Transportation duties, exchange locations, use of car seats, and other restrictions
    - v. Communication between parent and child (telephone, email, video-teleconferencing, social networks, restrictions, specific times, unlimited, etc.)
    - vi. Communication between parents regarding children (telephone, email, online program (e.g., Our Family Wizard or Share Kids), through a third party, none, etc.)



- vii. Necessary restrictions and limits to ensure safety (smoking/drug/alcohol use before or during parenting time, persons permitted to be present, removing children from county/state/county, passport access, etc.)
  - viii. Right to access of non-residential parent to records, daycare, school activities and restrictions to access (R.C. 3109.051(H)), (R.C. 3319.321(B)(5)(a)), (R.C. 3125.16), (R.C. 3319.321(F)), (R.C. 3109.051(I))
  - ix. Notice of intent to relocate (R.C. 3109.05(G)); time of filing (consider timing beyond statutory requirements)
  - x. May include child support provisions (R.C. 3111.13, R.C. 3111.29)
  - xi. Must include child support provisions if parties divorcing (R.C. 3105.21)
  - xii. Mechanism for resolution of future disputes by non-adversarial dispute resolution process
- e. Parent not awarded APRR is “parent who is not the residential parent”, “parent who is not the residential parent and legal custodian”, and “noncustodial parent” (R.C. 3109.04(L)(3))
- f. Value of including mechanism for resolving future disputes, or final decision-maker of issue if no agreement
- 2. Does the court have the power to separate and allocate decision making domains in a non-“shared parenting” order? (e.g., medical decisions to mother and educational decisions to father) Yes, according to *Sejka v. Sejka*, 2017-Ohio-2, (9th Dist.), *Carr v. Carr*, 2016-Ohio-6986, (12th Dist.) and *Nicola v. Nicola*, 2015-Ohio-3540 (11th Dist.).
- E. Appellate review of parenting orders (R.C. 3109.04(H))
  - 1. Calendar priority
  - 2. “Handle it expeditiously”
  - 3. Standard of review: Abuse of discretion
  - 4. Parenting proceedings not stayed pending appeal

## **VIII. Modifying Custody Orders**

- A. Rebuttable presumption in favor of retaining the existing determination (Supports rationale of maintaining stability and continuity for child (R.C. 3109.04(E)(1)(a))
- B. Reallocation of parental rights and responsibilities (RAPRR): The three-part test (R.C. 3109.04)
  - 1. Find change in circumstances of child or residential parent (new facts arising since prior decree or that were unknown to court at time) (R.C. 3109.04(E)(1)(a))
  - 2. Find that modification is in child’s best interest (R.C. 3109.04(B)(1)) must consider best interest factors of (R.C. 3109.04(F)(1))
  - 3. Find that one of following applies:
    - a. “Residential parent” agrees to modification (R.C. 3109.04(E)(1)(a)(i))
    - b. Child is integrated into family of person seeking to become residential parent with consent of “residential parent”, (R.C. 3109.04(E)(1)(a)(ii))
    - c. Harm likely to be caused by change in environment is outweighed by advantages of change of environment to child (R.C. 3109.04(E)(1)(a)(iii))

- C. Parent ordered for active military service (AMS) (R.C.3109.04(I))
  - 1. Notification of other parent required (R.C. 3109.04(I)(1))
  - 2. Either parent may apply for expedited hearing (R.C. 3109.04(I)(2))
  - 3. Court to schedule hearing within 30 days; handle expeditiously if exigent circumstances exist (R.C. 3109.04(I)(2))
  - 4. AMS is not a change in circumstance justifying modification under division (E) (R.C. 3109.04(I)(2))
  - 5. Court may issue temporary orders APRR (R.C. 3109.04(I)(3))
  - 6. Court shall permit parent ordered to AMS to participate and attend by electronic means (R.C. 3109.04(I)(4))
  - 7. Notice required by parent ordered to AMS when AMS terminated (R.C. 3109.04(I)(5))
- D. APRR can be modified to shared parenting (R.C. 3109(E)(1)(b))
- E. Modification to Shared Parenting: The three-part test
  - 1. Find change in circumstances of child or either parent (new facts arising since prior decree or that were unknown to court at time) (R.C. 3109.04(E)(1)(a))
  - 2. Find that modification is in the best interest (R.C. 3109.04(B)(1)) must consider best interest factors of (R.C. 3109.04(F)(1) and 3109.04(F)(2))
  - 3. Find that one of following applies:
    - a. “Residential parent” agrees to modification (R.C. 3109.04(E)(1)(a)(i))
    - b. Child is integrated into family of person seeking to become residential parent with consent of “residential parent” (R.C. 3109.04(E)(1)(a)(ii))
    - c. Harm likely to be caused by change in environment is outweighed by advantages of change of environment to child (R.C. 3109.04(E)(1)(a)(iii))
  - 4. See *Gunderman v. Gunderman*, 2009-Ohio-3787, ¶ 23 (9th Dist) : Trial court's modification of parties' shared parenting plan as to afford father greater time with child represented not just a change in a term of the plan but reallocated the parental rights and responsibilities of the parties in manner as to require a finding that a change in circumstances had occurred since entry of original decree
- F. Change of Circumstances
  - 1. Generally
    - a. The *court shall not modify a prior decree allocating parental rights and responsibilities* for the care of children *unless it finds, based on facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree*, that a change has occurred in the circumstances of the child, the child's residential parent, or either of the parents subject to a shared parenting decree.
    - b. R.C. 3109.04(E)(1)(a)
    - c. Statute governing modification of decrees allocating parental rights and responsibilities, while requiring that change in circumstances justifying change of custody be *change of substance and not slight or inconsequential*, does not require “substantial” change in circumstances; word “substantial” does not appear in statute.
      - i. *Davis v. Flickinger*, 1997-Ohio-260, 77 Ohio St. 3d 415, 674 N.E.2d 1159 (Ohio Supreme Court)
  - 2. Policy behind Change of Circumstances
    - a. Intent of statute is to *spare children from constant tug of war between their parents and provide stability to custodial status of children.*

- i. Davis v. Flickinger, 1997-Ohio-260, 77 Ohio St. 3d 415, 674 N.E.2d 1159 (Ohio Supreme Court)
    - 3. Prior Allocation → Determines the Change of Circumstances Finding
      - a. **If Sole Custody**
        - i. If one parent (or non-parent) was granted sole legal custody, then the change of circumstances must occur with the child or legal custodian.
          - i. Malone v. Malone, 2011-Ohio-2096 (3<sup>rd</sup> Dist)
          - ii. Truax v. Regal, 2002-Ohio-4867, ¶ 14 (9<sup>th</sup> Dist)
        - ii. See Also R.C. 2151.42(B)
          - i. An order of disposition issued under division (A)(3) of section 2151.353, division (A)(3) of section 2151.415, or section 2151.417 of the Revised Code ***granting legal custody of a child to a person is intended to be permanent in nature. A court shall not modify or terminate an order granting legal custody of a child unless it finds, based on facts that have arisen since the order was issued or that were unknown to the court at that time, that a change has occurred in the circumstances of the child or the person who was granted legal custody,*** and that modification or termination of the order is necessary to serve the best interest of the child.
      - iii. For example
        - i. Court awards custody. The non-residential parent had commendable progress of attending counseling and completing various treatment programs is not pertinent to the change of circumstances analysis.
          - In re P.A.R., 2014-Ohio-802, ¶ 23 (4<sup>th</sup> Dist), citing to In re Brayden James, 113 Ohio St. 3d 420 (Ohio Supreme Court)
        - ii. Grandparents were awarded custody. After losing custody, mother completed a drug treatment program, become drug free, obtained employment, and has stable income. The Appellate Court found that although mother's progress is commendable, it does not constitute a change of circumstances since she is not the residential parent. Thus, her motion for custody was denied.
          - In re P.A.R., 2014-Ohio-802, ¶ 23 (4<sup>th</sup> Dist)
    - b. **If Shared Parenting or Shared Custody**
      - i. Change must occur with the child or either party subject to the shared parenting plan.
      - ii. Same applies to shared custody.
        - i. R.C. 3109.04(E)(1)(a)
      - iii. Modification of parenting time under a shared parenting plan requires a change of circumstances finding
  - 4. Examples of Changes of Circumstances Findings
    - a. **Re-Marriage + Hostility**
      - i. When residential parent's new marriage creates hostility among the parties and frustrates visitation.
        - i. In re. P.A.R. 2014 Ohio 802 (4<sup>th</sup> Dist)
    - b. **Interference with Visitation**
      - i. It is a well-settled rule in Ohio that a custodial parent's interference with visitation by a noncustodial parent may be considered as part of a

‘change in circumstances’ which would allow for modification of custody.”

- i. *Holm v. Smilowitz*, 83 Ohio App.3d 757, 773, 615 N.E.2d 1047 (4th Dist., 1992).
- c. **Repeatedly Denying Communication that causes court intervention**
  - i. When a parent repeatedly denies the other telephonic communication and requires the nonresidential parent to seek court intervention on multiple occasions to obtain visitation, then this interference may constitute a change in circumstances.
    - i. *Clark v. Smith*, 130 Ohio App.3d 648, 654, 720 N.E. 2d 973 (3rd Dist.1998) (upholding trial court's finding that the mother's interference with visitation constituted a change in circumstances when mother repeatedly denied the father telephonic communication and when on at least three occasions, father had to seek court intervention in order to obtain visitation).
- d. **Driving while under influence**
  - i. Father's conviction for driving under the influence while minor child was in the vehicle constituted a change in circumstances warranting modification of child custody arrangement, under which father had been residential parent, where, not only was father convicted of a criminal offense, the conduct that led to his conviction put minor child's safety directly at risk
    - i. *Barrett v. LeForge*, 2012-Ohio-5865 (9<sup>th</sup> Dist)
- e. **Academic Fluctuations**
  - i. Generally, a change in a child's academic performance does not demonstrate a “change in circumstances” warranting modification of a prior custody decree, unless the change materially affects the child's overall academic progress; thus, temporary and minor grade fluctuations ordinarily do not show a change in circumstances. R.C. § 3109.04(E)(1)(a).
  - ii. The parent seeking to reallocate parental rights and responsibilities must show that a child's academic performance has actually changed since the divorce; showing that a child's academic progress has remained stagnant or that the child's grades have always been lackluster is not sufficient. R.C. § 3109.04(E)(1)(a).
    - i. *Hobbs v. Hobbs*, 2015-Ohio-1963, 36 N.E.3d 665 (4<sup>th</sup> Dist)
- f. **Relocation of Residential parent**
  - i. Change of residence on part of residential parent that has no direct impact on child amounts to slight or inconsequential change in circumstances, *while move that directly impacts child in some demonstrable way constitutes substantive change sufficient to meet threshold showing*, on nonresidential parent's motion for modification of parental rights and responsibilities, that change of circumstances has occurred warranting further inquiry to determine whether change of custody is in best interest of child
  - ii. Children had close relationships with members of extended family resident in state on both sides of the family and no connection with state to which former husband proposed to move, and where proposed move would undoubtedly impact children's ability to continue their family relationships
    - i. *Zinnecker v. Zinnecker*, (1999) 133 Ohio App. 3d 378, 728 N.E.2d 38 (12<sup>th</sup> Dist.)

g. **Child's Wishes**

i. Background on child's wishes = CoC

- i. Under the prior version of R.C. 3109.04, a court was permitted to allow any child who was twelve years of age or older to choose the parent with whom the child wanted to live, unless the parent chosen was unfit to take charge or the child's best interests were not served in allowing him to choose. Former R.C. 3109.04(A). Amended R.C. 3109.04 eliminates the child's ability to choose a residential parent. Under the amended version of R.C. 3109.04, a change in a child's wishes and concerns regarding a residential parent standing alone is not a change of circumstances. *Butland v. Butland* (June 27, 1996), Franklin App. No. 95APF09-1151, unreported (1996 Opinions 2701). Rather, a change in the child's wishes and concerns, depending on the facts and circumstances which prompted the change, *may* form a sufficient basis for finding the requisite change in circumstances. As a result, a trial court abuses its discretion by finding a change of circumstances based solely on a change in the child's wishes and concerns.

ii. Butland v. Butland, No. 95APF09-1151, 1996 WL 362038, at \*4 (10<sup>th</sup> Dist.)

- i. A trial court should evaluate a child's wishes and concerns regarding the allocation of parental rights and responsibilities from the *standpoint of their depth, sincerity, and the extent they reflect changed circumstances within the parent-child relationship or relationship between the parties.*

iii. Moyer v. Moyer, No. 96APF05-659, 1996 WL 729859, at \*3 (10<sup>th</sup> Dist.)

- i. A child's wishes are often transitory; *to allow a change in a child's wishes automatically to serve as a change of circumstances for purposes of R.C. 3109.04(E)(1)(a) might cause the constant relitigation of issues which the "change in circumstances" requirement is designed to avoid. No court can permit a child constantly to effect change in his or her residential parent based on the simple change of mind in that regard.*
- ii. Thus, if the child's wishes and concerns appear to be based on frivolous reasons or imagined concerns, a court should refuse to find a change of circumstances, as is true for situations in which the trial court finds the child is irresponsible and immature. *Butland*, supra, at 2708.

iv. Baxter v. Baxter, 2011-Ohio-4034 (9<sup>th</sup> Dist.)

- i. Evidence supported finding that there had been no change in circumstances that warranted modification of parental rights and responsibilities, in post-divorce action to modify child custody; *the fact that son had a stronger bond with father since father had become child's residential parent was an intended result of the trial court's decision to award custody to father, and thus did not constitute a change of circumstances warranting modification of child custody, child's desire to reside with mother was not a substantial change in circumstances, and child's development of a strong sibling relationship with half brother was not a fact that had arisen since the prior decree.*

G. Joint motion to modify shared parenting plan (R.C. 3109.04(E)(2)(a))

1. Court can approve if in BIOC

2. Court can find the proposed modification not in BIOC,
  - a. Reject, or
  - b. Make modifications to the proposed modification that are in BIOC
- H. Modification of shared parenting plan on court's own motion or request of one or both parents (R.C. 3109.04(E)(2)(b))
  1. At any time
  2. If in the BIOC

**IX. Termination of Shared Parenting Plan (R.C. 3109.04(E)(2)(c))**

- A. Court may terminate prior approved plan submitted under (R.C. 3109.04(D)(1)(a)(i))
  1. Upon request of either or both parents
  2. Whenever court determines shared parenting not in the BIOC (rule varies among appellate districts)
  3. Change of circumstances in some districts
- B. Court may terminate prior approved plan submitted under (R.C. 3109.04(D)(1)(a)(ii) and (iii))
  1. Upon court's own motion or on the request of either or both parents
  2. If court determines that shared parenting not in the BIOC (rule varies among appellate districts)
- C. Best interest only (no change of circumstances required to terminate SPP)
  1. Batcher v. Pierce, 2013 Ohio 4677 (9<sup>th</sup> Dist)

*{¶ 23} A court may terminate an SPP upon a determination that the SPP is not in the best interest of the children. Kannan at ¶ 9, quoting R.C. 3109.04(E)(2)(c). “A termination under this section does not require a showing of a change in circumstances or a showing that the advantages of the change outweigh the likely harm.” Hamby v. Hamby, 9th Dist. Summit No. 23096, 2006–Ohio–6905, ¶ 6. It only requires a trial court to perform a best interest analysis under R.C. 3109.04(F). Sindelar v. Gall, 9th Dist. Summit No. 25022, 2010–Ohio–1960, ¶ 8–9. Accord Kannan at ¶ 9–16; Bentley v. Rojas, 9th Dist. Lorain No. 10CA009776, 2010–Ohio–6243, ¶ 19.*

2. Hamby v. Hamby, 2006–Ohio–6905, ¶ 6 (9<sup>th</sup> Dist)

The present motion, however, is not a motion to *modify* the shared parenting plan pursuant to R.C. 3109.04(E)(1) but a motion to *terminate* it pursuant to R.C. 3109.04(E)(2)(c). See *Tyras v. Tyras* (June 14, 2000), 9th Dist. No. 99CA007301, at \*1. *A termination under this section does not require a showing of a change in circumstances or a showing that the advantages of the change outweigh the likely harm.*



- D. If modification attempted under (R.C. 3109.04(E)(2)(a)) and the court rejects, the court may terminate shared parenting if not in the best interest of children
- E. Court must consider all best interest factors in (R.C. 3109.04(F)(1), 3109.04(F)(2))
- F. Upon termination, the court must proceed to APRR as if shared parenting had never been ordered

**X. Proceedings Involving Non-parents**

- A. Legal custody to a non-parent
  - 1. By agreement of the parents
  - 2. By court if parents found “unsuitable” (In re Perales, 52 Ohio St.2d 89 (1977))
    - a. Abandonment
    - b. Contractual relinquishment of custody
    - c. Total inability to provide care or support
    - d. Parent otherwise unsuitable (award of custody would be detrimental to the child.) Finding of abuse, neglect, or dependency is a de facto finding of unsuitability
    - e. Custody to relative pursuant (R.C. 3109.04(D)(2)) requires unsuitability finding. Option to certify custody to juvenile court. (R.C. 3109.06)
  - 3. Background - When a non-parent third party (i.e. a relative of the child or third party) files a complaint for legal custody of the minor child.
  - 4. Most common cases in Juvenile Court are when a grandparent files for custody. But it could be anyone – grandparent, uncle, aunt, older sibling, neighbor, etc.
  - 5. Parents have a fundamental substantive due process right in the care, **custody**, and control of their children.
    - a. *Meyer v. Nebraska* (1923), 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 and has been continuously upheld by the United State Supreme Court. *Troxel, supra*; see also, *Pierce v. Society of Sisters* (1925), 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070; *Prince v. Massachusetts* (1944), 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645; *Stanley v. Illinois* (1972), 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551; *Wisconsin v. Yoder* (1972), 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15; *Quilloin v. Walcott* (1978), 434 U.S. 246, 98 S.Ct. 549, 54 L.Ed.2d 511; *Santosky v. Kramer* (1982), 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599. Thus, the United States Supreme Court stated that there can be no doubt “that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.” *Troxel, supra*.
  - 6. Presumption → that fit parents act in the best interest of the children.
  - 7. Due Process Clause does not permit a state to infringe on the fundamental right of parents to make child rearing decisions simply because a Court believes a “better” decision could be made.
- B. Two methods of allocating custody between parent(s) and non-parent(s)
  - 1. **Sole Legal Custody**
    - a. Defined: where third party/non-parent is designated as the child(ren)’s legal custodian and residential parent.
      - i. *Note*: the other parent is awarded visitation and has access to school/medical records, unless the Court finds the access to not be in the child’s best interest. R.C. 3109.051(H)(1).

2. **Shared Custody**

- a. Defined: where parent and non-parent share in the care, custody, and control of the minor child.
  - i. See *In re Bonfield*, 2002 Ohio 6660 (Ohio Supreme Court) and *Polhamus v. Robinson*, 2017 Ohio 39 (3<sup>rd</sup> Dist.)

3. Note

- a. Cannot have a shared parenting plan between a parent(s) and nonparent; it is void ab initio.
- b. See *Konicek v. Konicek*, (2001) 144 Ohio App. 3d 105, 759 N.E.2d 801 (9<sup>th</sup> Dist)
  - i. Shared parenting plan that designated grandfather, mother, and father each as residential parent and legal custodian was void ab initio; court cannot give non-parent parental status

C. Legal Standards

1. **Parental Unsuitability**

- a. Must find parent(s) unsuitable
  - i. Cannot award custody to a nonparent without first making a finding by a preponderance of the evidence that parents are unsuitable.
    - i. *In re Perales*, (1977) 52 Ohio St. 2d 89, 369 N.E.2d 1047 (Ohio Supreme Court).
  - ii. The proper standard is not if a non-parent is *more* suitable. But instead, if the parent is *unsuitable*.
  - iii. Parents are presumed suitable, until proven otherwise.

b. 4 ways to establish unsuitability (must prove 1 of the 4)

i. **Parent Abandoned the child**

i. Reynolds v Goll 75 Ohio St. 3d 121 (Ohio Supreme Court)

- Mother diagnosed with cancer. Father had to take care of mother and had trouble coping with mother's illness.
- In 1984, Father placed child in care of plaintiffs/interested third parties. Plaintiffs cared for the minor child.
- In 1989, after mother's death, plaintiffs filed for custody.
- During that timeframe, father only visited the child 5 times.
- For the first 8 months after the children's mother died, father did not visit with the children.
- Father conceded that he never called the child or offered any financial support.
- Trial Court found father abandoned the child.

ii. In re Beireis 2004 Ohio 1506 (12<sup>th</sup> Dist)

- Mother left child in care of grandmother for a period of more than 7 months. Mother made no attempt to visit, communicate, or care for the child while in grandmother's care.

iii. R.C. 2151.011(C)

- Abandonment is defined as follows: "For the purposes of this chapter, a child shall be presumed abandoned when the parents of the child have failed to visit or maintain contact with the child for more than ninety days, regardless of whether the



parents resume contact with the child after that period of ninety days.

**ii. Parent contractually relinquished custody of the child**

**i. Masitto v. Masitto, (1986) 22 Ohio St. 3d 63, 65, 488 N.E.2d 857, 860 (Ohio Supreme Court)**

- Under the law pronounced in *Perales, supra*, if a parent contracts away custody rights of his minor child, he may be considered to have forfeited his right to custody of such child, and may accordingly be found to be unsuitable for custody. Parents may undoubtedly waive their right to custody of their children and are bound by an agreement to do so.
- Father consented to legal guardianship of his daughter to maternal grandparents and consented to his divorce decree that incorporate their agreement that awarded grandparents care of the minor child.

**iii. Parent has become totally incapable of supporting or caring for the child;**

- i. For example:** parent becomes deceased, incarcerated, committed to a psychiatric facility, physically disabled to point where no longer can care for child, etc.

**iv. An award of custody would be detrimental to the child**

**i. In re Z.A.P. 2008 Ohio 3701 (4<sup>th</sup> Dist)**

- Grandmother filed for custody.
- Mother used drugs, had dirty home and in disarray. Always had strangers over. No help with homework. Child exhibited serious behavior problems while living with mother.
- Child was sent to live with grandmother. After living with grandma, child became completely different person. No longer skinny, good grades, behavior and attendance improved.
- Magistrate found child would be “emotionally devastated” if child was required to live with mother.
- Thus, custody to mother would be detrimental.

**ii. In re S.M. 2005 Ohio 2187 (8<sup>th</sup> Dist)**

- Both grandmother and father filed for custody. Mother died.
- Father rarely attended child’s extracurricular activities, did not attend parent/teacher conferences, failed to pay child support. Father had problems with providing the child reliable transportation. Father depended on grandmother to transport the child.
- GAL testified that between the loss of their mother and being moved from place to place to live with family members caused traumatic changes in the children’s lives.
- The time spent with grandmother created stability.
- Thus, custody to father would be detrimental.

**iii. In re Galan 2003 Ohio 1298 (3<sup>rd</sup> Dist)**

- From the time the child was born to turning 4, the child and mother lived with paternal grandparents.

- Mother and child then began moving to different locations with mother's boyfriend, who was a convicted drug felon. This lasted for a few years.
- Mother placed the child back in the care of paternal grandparents on December 3, 1999.
- Paternal grandparents resume caring for the minor child for two more years.
- Mother then moved back near paternal grandparents, obtained a job, and notified paternal grandparents and the child that she will be taking the child to come back to living with her.
- Paternal grandparents filed a complaint for custody, claiming that mother voluntarily relinquished custody on December 3, 1999, had sporadic minimal contact with the child, and it would be detrimental to the child. Over the last two years, mother's contact with the child was sporadic.
- Trial Court awarded paternal grandparents custody. Mother appealed arguing that ruling was not supported by evidence.
- Court found that mother abandoned the child and it was detrimental to return custody back to mother.

Abandonment: mother voluntarily placed the child with grandparents on December 3, 1999. That evening, mother and Pat. GMA had a telephone conversation where mother placed in grandparents' custody for an indefinite period of time. Both parties confirmed the existence of the agreement. Mother stated that grandparents believed that the child was going to reside with them for an indefinite period of time.

Detriment to child: Paternal grandparents were the child's primary caregiver throughout the child's life. Evidence also showed that mother put her needs above the child's. Mother met her new boyfriend and moved to Toledo, uprooting the child once again. At this time, the child was in first grade and was just weeks away from completing the second quarter of school. Because of mother's move, and the child's placement with paternal grandparents, the child did not complete the second quarter at St. Wendolyn Elementary. Witnesses also stated that mother never appeared for parent-teacher conferences. Also, up to the filing of the complaint, mother's visitation with the child was sporadic. Lastly, during the in camera interview, the child expressed wishes to live with grandparents and enjoys being in their home. Many witnesses testified that the child is happy, maintained an A/B average, and was active in school and extra curricular activities.

2. ***Best Interest***

- a. See above best interest factors → R.C. 3109.04(F)(1)

3. ***Please note***

- a. Once a nonparent has acquired custody of a child, the court need not apply the unsuitable standard to a later request for custody modification; instead,

custody modification in that situation is determined under a change in circumstances/best interest standard (see section below).

- i. See Purvis v. Hazelbaker, 2009-Ohio-765, 181 Ohio App. 3d 167, 908 N.E.2d 489 (4<sup>th</sup> Dist)

D. Companionship/visitation rights (R.C. 3109.051(B)), (R.C. 3109.12) and (R.C. 3111.26; *Troxel v. Granville*, 530 U.S. 57 (2000))

1. Person must file motion or complaint
2. Court determines that person has an interest in the child's welfare
3. Determine that granting is in the best interest of the child
  - a. R.C. 3109.051(D) Best Interest Factors for Visitation/Parenting Time
    - (1) The prior interaction and interrelationships of the child with the child's parents, siblings, and other persons 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;
    - (2) The geographical 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;
    - (3) 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 the parents' holiday and vacation schedule;
    - (4) The age of the child;
    - (5) The child's adjustment to home, school, and community;
    - (6) If the court has interviewed the child in chambers, pursuant to division (C) of this section, regarding the wishes and concerns of the child as to parenting time by the parent who is not the residential parent or companionship or visitation by the grandparent, relative, or other person who requested companionship or visitation, as to a specific parenting time or visitation schedule, or as to other parenting time or visitation matters, the wishes and concerns of the child, as expressed to the court;
    - (7) The health and safety of the child;
    - (8) The amount of time that will be available for the child to spend with siblings;
    - (9) The mental and physical health of all parties;
    - (10) 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 or visitation, the willingness of that person to reschedule missed visitation;
    - (11) In relation to parenting time, whether either parent previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child; whether either parent, in a case in which a child has been adjudicated an abused child or a neglected child, previously has been

determined to be the perpetrator of the abusive or neglectful act that is the basis of the adjudication; and whether there is reason to believe that either parent has acted in a manner resulting in a child being an abused child or a neglected child;

- (12) In relation to requested companionship or visitation by a person other than a parent, whether the person previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child; whether the person, in a case in which a child has been adjudicated an abused child or a neglected child, previously has been determined to be the perpetrator of the abusive or neglectful act that is the basis of the adjudication; whether either parent previously has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding; whether either parent previously has been convicted of an offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding and caused physical harm to the victim in the commission of the offense; and whether there is reason to believe that the person has acted in a manner resulting in a child being an abused child or a neglected child;
- (13) 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 an order of the court;
- (14) Whether either parent has established a residence or is planning to establish a residence outside this state;
- (15) In relation to requested companionship or visitation by a person other than a parent, the wishes and concerns of the child's parents, as expressed by them to the court;
- (16) Any other factor in the best interest of the child.

- b. Discretionary in camera interview as to children's "wishes and concerns" regarding visitation and parenting time (R.C. 3109.051(C))

## **XI. Enforcing Custody Orders**

- A. Indirect civil contempt for interference with parenting time (R.C. 3109.051(K))
  - 1. Unique, quasi-criminal proceeding involving challenge to court's authority commonly used in family law cases with its continuing orders
  - 2. Basis
    - a. Inherent power of court, not constitutional grant or statute
    - b. R.C. 2705.02 (list of various kinds of indirect contempt)
  - 3. Procedure (R.C. 2705.031-2705.10)
  - 4. Initiation of contempt proceeding
    - a. Motion for contempt and affidavit informing court of alleged violation

- b. Summons and order to show cause (R.C. 2705.031(B)(2))
      - i. Notices
      - ii. Service
  - 5. Right to counsel
    - a. Court appointment for indigent alleged contemnor
    - b. What constitutes indigency?
    - c. Continuance to obtain counsel
  - 6. Contempt Hearing
    - a. Burden of proof clear and convincing evidence (Ohio Jury Instructions, CV Section 303.07 (Rev. Feb. 14, 2018))
    - b. Right of alleged contemnor to present evidence
    - c. Proof of willfulness not prerequisite
  - 7. Defenses
    - a. Inability to comply
    - b. Substantial compliance excuses contempt charges
    - c. Violation of order may not be contempt
  - 8. Character of sanctions
    - a. Must be coercive (remedial/punitive aspects)
    - b. Incarceration or fine
    - c. Attorney fees and court costs (R.C. 3109.051(K))
    - d. Cannot permit escrowing, impounding or withholding child support for violation of parenting time, companionship or visitation order (R.C. 3109.05(D))
  - 9. Purge
    - a. Reasonable compensatory time with child (R.C. 3109.051(K))
    - b. May be creative, (e.g., attend parent education, compensatory driving to facilitate contact, pay cost of parenting evaluation or unrecoverable airfare
    - c. Cannot be what was already ordered)
  - 10. Contempt order not final unless sanction ordered
  - 11. Imposition of sentence upon failure to purge
    - a. Issuance of capias
    - b. Alternatives to imposition
    - c. Review hearing
- B. Contempt not well-suited to solving complex emotional dynamics of access disputes
  - 1. Effect on well-being of children
    - a. Are children better off if parent is in jail?
    - b. Is it counter-productive; do children see jailed parent as a martyr?
  - 2. May be counter-productive to solving underlying problem
- C. Need to fast-track parenting access enforcement cases (“time lost to parent a child can never really be made up”)
- D. Consider the creation of intake services and programs to handle parenting time access issues as alternative to enforcement by contempt; use of parenting coordination
- E. Consider the applicability of Civ.R.71. or joinder of non-parties interfering with court orders

## **XII. Special Federal and State Legislation**

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- A. Uniform Child Custody, Jurisdiction and Enforcement Act (UCCJEA) (R.C. Chapter 3127) Regulation of jurisdiction between states to make and modify custody and visitation determinations
- B. Applicability to custody/visitation proceedings (divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, protection from domestic violence)
  - 1. Initial and modification jurisdiction tool
    - a. Home state priority jurisdiction (R.C. 3127.15 (A) (1))
    - b. Significant connection jurisdiction (R.C. 3127.15 (A) (2))
    - c. More appropriate forum jurisdiction (R.C. 3127.21)
    - d. Vacuum jurisdiction (no other forum) (R.C. 3127.15 (A) (4))
    - e. Temporary emergency jurisdiction (R.C. 3127.18)
    - f. Exclusive continuing jurisdiction (R.C. 3127.16)
    - g. Declining jurisdiction (Inconvenient forum) (R.C. 3127.21)
    - h. Communication between tribunals (R.C. 3127.09; R.C. 3127.37, Sup.R.10.06)
  - 2. Enforcement tool
    - a. Petition to register for out of state custody
    - b. Defenses to registration
      - i. Custody-determining court lacked jurisdiction
      - ii. Contestant did not receive notice
      - iii. Child custody determination vacated, stayed or modified
- C. Parental Kidnapping Prevention Act, 1980 (PKPA) (28 U.S.C. 1738A)
  - 1. Mandate that states afford full faith and credit to existing child custody orders of another state
  - 2. Federal Parent Locator Service available to locate abducted children
  - 3. Unlawful flight to avoid prosecution (UFAP) (18 U.S.C. 1073); federal warrant/FBI assistance
  - 4. Must have custody order (consider effect of R.C. 3109.042)
- D. Indian Child Welfare Act (ICWA 1978, 25 U.S.C. 1901-63) Be aware of how this works and the responsibilities of the Court.
- E. Hague Convention on the Civil Aspects of International Child Abductions (implemented by International Child Abduction Remedies Act (ICARA)) (22 U.S.C. 9001)
  - 1. Purpose:
    - a. Ensure that rights of physical custody and access under the law of one convention state respected in other convention state
    - b. Ensure prompt return of children to state of their habitual residence when wrongfully removed or retained
    - c. Restore status quo
  - 2. Means of returning child
    - a. Enforcement of order to return child (R.C. 3127.32)
    - b. Direct application to court in convention state.
    - c. Application with central authority (U.S. Dept. of State) in the home country
  - 3. Points to cover
    - a. Is other country a signatory to the Convention?

- b. Concurrent federal and state court jurisdiction
- c. Applicable to child under 16
- d. “Habitual residence”
- e. Limited defenses against return of child (consent, acquiescence, grave risk of harm, etc.)

**XIII. The Rise of Therapeutic Jurisprudence, Problem-Solving Courts and Alternative Dispute Resolution Processes: A Holistic Approach**

- A. Comparison of traditional process to transformed process
  - 1. Traditional process characteristics (legal outcomes, adversarial, rights-based, claim-oriented, legalistic, formal, etc.)
  - 2. Therapeutic process characteristics (intervention, future dispute avoidance, interest/needs-based, interdisciplinary, forward planning based, informal, etc.)
    - a. Re-conceptualizing judicial role as problem solver: From detached arbiter to hands-on involvement
    - b. Tension with judge’s traditional role
- B. Non-adversarial conflict resolution
  - 1. Mediation (Sup.R. 16; R.C. Chapter 2710; R.C. 3109.52; R.C. 3105.41-54)
    - a. Types
      - i. Facilitative
      - ii. Evaluative
      - iii. Transformative
    - b. Availability
      - i. Court-annexed
      - ii. Private
    - c. Process
      - i. Confidentiality
      - ii. Participants
      - iii. Domestic Violence Screening
    - d. Mediator qualifications
  - 2. Parenting coordination (Sup.R. 90-90.12)
    - a. Appointment
    - b. Process
    - c. Non-confidential
    - d. Compensation
  - 3. Early Neutral Evaluation (ENE)
  - 4. Collaborative and cooperative law (Attorney-led)
    - a. The collaborative process (R.C. 3105.44)
    - b. Cooperative process

**XIV. Self-Represented Litigants - Pro Se Litigants**

- A. Why do litigants represent themselves?
  - 1. Often, they can’t afford counsel
  - 2. They have read a “DIY” legal guide, law book reference manual (or online legal aids) and think their case is simple enough to handle it on their own
  - 3. They may watch legal shows on television and think they understand the system
  - 4. They may be mentally or emotionally challenged
  - 5. They may be angry litigants



6. They may be determined self-represented litigants—that appear to be making choices based on perceptions of the legal profession or the system, have a bad experience with the justice system previously or are a member of the sovereign citizens or a militia group
- B. About *pro se* litigants
1. Approximately 20% can afford counsel
  2. Their cases usually take less time
  3. They report being more satisfied with the judge than those litigants who are represented by counsel
  4. Nearly half believe their case is simple
  5. Estimated 55% to 80% of family law cases have pro se representation<sup>ii</sup>
- C. History
1. English common law roots
  2. Distinction between judicial and advocacy roles  
As the U.S. justice system formed, strict rule of evidence controlled judicial conduct by keeping the judge as a disinterested and impartial fact finder. Adoption of the rules of evidence and civil procedure help define the judicial role and the advocate's role by encouraging the judge to remain passive and preserve neutrality until he obtains judgment
  3. Shift from attorney representative to pro se  
A litigant comes to the attorney for his skill and expertise within this adversarial system. Presently however, due to various factors including the cost of litigation, there is a shift to the pro se litigant in our modern courts, especially when it involves family matters
- D. Constitutional right to self-represent
1. The United States Supreme Court held that the sixth amendment guarantees a defendant in a state criminal trial has an independent constitutional right of self-representation and that he may proceed to defend himself without counsel when he knowingly and understandingly waives his right to be represented by counsel. 28 U.S.C. § 1654. *Faretta v. California*, 422 U.S. 806, (1975)
  2. Appointment of Standby Counsel –The Supreme Court in *Faretta* found that “... a state may - even over objection by the accused - appoint a ‘standby counsel’ to aid the accused if and when the accused request help . . .”. 422 U.S. at 35 f.n. 46
  3. While appointment of standby counsel for a defendant proceeding pro se is the preferred practice, it is not mandatory. *McQueen v. Blackburn*, 755 F.2d 1174, 1178 (5<sup>th</sup> Cir. 1985)
  4. Generally speaking, parties are not entitled to court appointed counsel in civil proceedings. However, there is an exception in juvenile court proceedings regarding allegations of abuse, neglect or dependency
- E. Barriers to today's pro se litigants, such as
1. The barrier of legal language
  2. The complexity of the clerk's office and court procedures
  3. Problems with simple requirements (e.g., service)
  4. Legal requirements that are not intuitive
  5. Procedural rules that vary between types of cases
  6. Statutory or rule mandated timelines and deadlines
  7. Overcrowded dockets
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8. Courts often do not prepare an order after a hearing
9. Cases can be dismissed because of litigants' failures to perform steps of which they have no knowledge
10. Lack of understanding of orders and judgments and how to enforce them

**XV. Self-Represented Litigants - Balance Between Access to the Courts and Judicial Neutrality and Fairness**

**A. Access to the Court**

1. Although pro se representation may challenge or frustrate efficiency and sometimes decorum in the court, the right of litigants to have access to the court, in most instances, outweighs the inconvenience
2. Right to proceed as a pro se litigant
3. Research finds that the judge's involvement in a hearing or trial is fully consistent with access to justice, and often required by it, but can enhance the court's neutrality<sup>iii</sup>
4. Ohio law requires the court to appoint an interpreter in civil cases (R.C. 2311.14. Appointment of interpreter) and additionally, the Rules of Superintendence for the Court of Ohio require the courts to appoint a certified provisional or language-skilled interpreter in a case or court function (see Sup.R. 88)

**B. Upholding the "purposes of the courts"**

1. Twenty-five years ago, groups of lawyers, judges and justice administrators identified the following generally accepted eight purposes for which courts exist<sup>iv</sup>
  - a. To do individual justice in individual cases
  - b. To appear to do individual justice in individual cases
  - c. To provide a forum for the resolution of legal disputes
  - d. To protect individuals from the arbitrary use of government power
  - e. To provide a formal record of legal status
  - f. To deter criminal behavior
  - g. To rehabilitate persons convicted of crime
  - h. To separate convicted persons from society
2. National Center for State Courts 2005 findings regarding trust and confidence in courts found that
  - a. Substantive justice. Attorneys most often concerned with fairness in terms of substantive legal outcomes of cases (1<sup>st</sup> purpose)
  - b. Procedural justice v Citizens' views of the courts heavily influenced by their perceptions of the courts' ability to deliver a fair process (2<sup>nd</sup> purpose)
    - i. Participation/opportunity to be heard  
Questions asked: Did the party have the opportunity to participate in the process, such as by being able to present his or her case in court?
    - ii. Neutrality  
Questions asked: Did the judge treat all parties the same? Did the judge base the decision on objective factors, such as stated legal rules, or on the judge's personal values and biases?
    - iii. Trustworthiness  
Questions asked: Did the judge care about the case and the litigant? Was the judge concerned about the litigants' situation? Was the judge trying to do what was right for the litigants? Was everything done in the open?

- iv. Treatment with dignity and respect  
Questions asked: Was the party treated as a person and as a valued member of society?
  - v. Demeanor of the proceedings
- C. Focus of the national discussions regarding perceptions of procedural fairness are changing according to research
- 1. Previous focus—can the judge assist a self-represented litigant in the courtroom?
  - 2. Current focus—what are the most effective techniques for judicial courtroom assistance?
  - 3. Future focus—has the judge ensured a self-represented litigant a fair opportunity to be heard?

**XVI. Self-Represented Litigants - Ethical Duties and Guidance for Judicial Officers and Staff**

- A. Ohio Code of Judicial Conduct—special attention to Canon 2 Rules:
- 1. Rule 2.2 Impartiality and Fairness
    - a. A judge shall uphold and apply the *law*, and shall perform all duties of judicial office fairly and *impartially*
    - b. Comment
      - i. [1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded
      - ii. [2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question
      - iii. [3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this rule
      - iv. [4] To ensure self-represented litigants the opportunity to have their matters fairly heard, a judge may make reasonable accommodations to a self-represented litigant consistent with the law. See also Rule 2.6, Comment [1A] (emphasis added)
  - 2. Rule 2.6 Ensuring the Right to Be Heard
    - a. A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law
    - b. A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement
    - c. Comment
      - i. The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed
      - ii. The rapid growth in litigation involving self-represented litigants and increasing awareness of the significance of the role of the courts in promoting access to justice have led to additional flexibility by judges and other court officials in order to facilitate a self-represented litigant's ability to be heard. By way of illustration, individual judges have found the following affirmative, nonprejudicial steps helpful in this regard:

- (1) providing brief information about the proceeding and evidentiary and foundational requirements;
      - (2) modifying the traditional order of taking evidence;
      - (3) refraining from using legal jargon;
      - (4) explaining the basis for a ruling; and
      - (5) making referrals to any resources available to assist the litigant in the preparation of the case (emphasis added)
    - iii. Also refer to Ethics Curriculum Design IV B and F
  3. Function of comments – from preface and scope
    - a. The comments that accompany the rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the rules. They contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Comments neither add to nor subtract from the binding obligations set forth in the rules. Therefore, when a comment contains the term “must,” it does not mean that the comment itself is binding or enforceable; it signifies that the rule in question, properly understood, is obligatory as to the conduct at issue
    - b. Second, the comments identify aspirational goals for judges. To implement fully the principles of this code as articulated in the canons, judges should strive to exceed the standards of conduct established by the rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office
- B. Case Law
1. “It is well established that pro se litigants are presumed to have knowledge of the law and legal procedures and that they are held to the same standard as litigants who are represented by counsel.’ *State ex rel. Fuller v. Mengel*, 100 Ohio St.3d 352, 2003-Ohio-6448, ¶ 10, quoting *Sabouri v. Ohio Dept. of Job & Family Servs.*, 145 Ohio App.3d 651, 654, (10th Dist. 2001). While a pro se litigant may be afforded reasonable leeway to the extent that his or her motions and pleadings should be liberally construed, such a litigant may not be given any greater rights than a represented party and must bear the consequences of his or her mistakes. *Sherlock v. Myers*, 9th Dist. Summit No. 22071, 2004- Ohio-5178, ¶ 3.” (pursuant to Ohio Sixth District Court of Appeals, *In re Name Change of HMB* Decided 3-29-13, L-12-1180, ¶9)
  2. What judges can do, such as
    - a. Liberally construing documents filed
    - b. Allowing liberal opportunity to amend
    - c. Assisting parties to settle the case
    - d. Explaining how to subpoena witnesses
    - e. Explaining how to question jurors and exercise peremptory challenges and challenges for cause
    - f. Explaining legal elements required to obtain relief
    - g. Explaining how to introduce evidence
    - h. Explaining how to object to the introduction of evidence
    - i. Explaining the right to cross-examine witnesses presented by the opposing party
    - j. Calling witnesses and asking questions of them
    - k. Preparing jury instructions for a self-represented litigant or requiring opposing counsel to do so

3. What judges are required to do: procedural accommodations that a juvenile judicial officer must provide to a self-represented litigant
4. What judges cannot do: judicial actions deemed inconsistent with judicial neutrality, such as
  - a. In effect acting as counsel for pro se litigants
  - b. Denying rights to pro se litigants
5. What judges are protected from: a pro se litigant will not be allowed to contest the propriety of judicial accommodations that he or she requested

C. Court staff

1. Roles and responsibilities of court staff

Court employees must do all of the following *without* rendering legal advice:

- a. Provide accurate information—even small mistakes can seriously impact a case
  - b. Provide access to the court system—If people don't know how to access the court system, and those who do don't help them, access is being denied
  - c. Provide customer service—this is more than just providing information  
Good customer service includes timeliness, helpfulness, and the ability to problem solve
  - d. Increase the public's understanding and knowledge of the court system—responding to inquiries in a way that informs the public and leaves them with as positive a view of the court system as possible
  - e. Increase the public's trust and confidence in the administration of justice
  - f. Provide management of *pro se* litigation
2. Why are court employees not allowed to give legal advice?
- Clerks possess legal *information* that can be helpful to the public. However, this cannot spill into the provision of legal *advice*. This is true for three reasons:
- a. Courts have an obligation to be absolutely impartial. It cannot provide an advantage to either side of a dispute by helping with the provision of legal advice. They must never give advice or information to one party that they would not give an opponent
  - b. Courts have an obligation to be neutral. Court staff should be mindful of the basic principle that neither parties nor their attorneys may communicate with the judge *ex parte*. Court staff should not let themselves be used to circumvent that principle by conveying information to a judge on behalf of a litigant
  - c. Clerks must abstain from the unauthorized practice of law
3. The Unauthorized practice of law
- a. What is the practice of law?
    - i. The practice of law is “the doing or performing [of] services in a court . . . [b]ut in a larger sense it includes legal advice and counsel.” *Land Title Abstract & Trust Co. v. Dworken*, 129 Ohio St. 23, 28 (1934)
    - ii. The practice of law “is not limited to the conduct of cases in court. It embraces the preparation of pleadings and other papers incident to actions . . . and the management of such actions and proceedings on behalf of clients . . . and in general, all advice to clients and all action taken for them in matters connected with the law” *Judd v. City Trust & Sav. Bank*, 133 Ohio St. 81 (1937) (*citing Dworken*)
  - b. What is the unauthorized practice of law?
    - i. The Supreme Court of Ohio has original jurisdiction over this question

- ii. Public policy prohibits people from receiving legal advice from nonlawyers
- iii. Gov. Bar Rule VII is built on the premise that limiting the practice of law to licensed attorneys is generally necessary to protect the public against incompetence, divided loyalties, and other attendant evils that are often associated with unskilled representation
- iv. Examples from caselaw:
  - (1) *Amerisure v. Michigan Basic Property Ins. Assn.*, 2005 Mich. App. LEXIS 1122, 2005 WL 1106545—petitioners inadvertently filed a complaint in the wrong court and attempted to blame the clerk’s office
  - (2) *Duffy v. Montana*, 2005 MT 228 (2005)—A criminal defendant moved to withdraw his guilty plea as involuntary. He alleged that he only signed the waiver of rights form because the clerk of court told him that “you really do not have a case”
  - (3) *In re: Condemnation of Land*, 280 Kan. 576 (2005)—a party arguably allowed its appellate timeline to expire when it timely filed a notice of appeal but did not comply with the rules requiring the payment of a docket fee. The party alleged that it was the clerk’s responsibility to inform the party of this
  - (4) *Fouliard v. Biedermann*, 312 Wis.2d 482 (2008)—The clerk mistakenly suggested that plaintiff file a jury demand, even though the filing deadline had already passed. The clerk then wrote plaintiff a letter, stating that she made an error allowing the jury demand and returning his \$ 36.00 filing fee. While his case was not affected by the clerk’s suggestion, the plaintiff sued her for violating her fiduciary duties
  - (5) *Darby v. Mississippi State Board of Bar Admissions*, 185 So.2d 684 (1966)—the Court sanctioned a chancery court clerk for the unauthorized practice of law when she drew up deeds and deeds of trust, bills of sale, notes, and title certificates
- 4. Legal information vs. legal advice
  - a. Legal information—generic
  - b. Examples: books, pamphlets, guides, information possessed by clerks
  - c. In a court setting, court personnel may freely distribute legal information, such as:
    - i. Information that describes court facilities and procedures, legal terminology, or the options available to litigants
    - ii. General information available to all court users and not information related to a specific litigant’s case
    - iii. Information about known legal concepts and court practices
  - d. Legal advice—specific
    - i. Application of legal information to a particular legal problem; employing an analysis
    - ii. Recommending a specific course of conduct
    - iii. Following the legal advice (good or bad) will affect the rights and obligations of individuals under the law
    - iv. Actions taken in concert with, or against, the advice are usually irreversible
    - v. Examples:
      - (1) Legal interpretation

- (2) Procedural advice
- (3) Legal research
- (4) Legal opinion
- (5) Statute of limitations
- vi. Good tests:
  - (1) Am I offering information to a client/customer with the objective of having them act upon that information or further their best interest?
  - (2) If the question start with the words “Should,” “Could,” or “Would,” it may be seeking legal advice. If it starts with “What is,” “Where is,” “Can I,” or “How do I,” it is most likely seeking legal information

5. Confidentiality

Not every fact known to court staff is a matter of public record. Court personnel should be mindful that sensitive information should be carefully guarded until it is a matter of public record. Innocent or casual remarks about pending or closed cases; about participants in litigation; or about juries could give an unfair advantage to one party or another in litigation

Even once facts of a case become a matter of public record, court personnel should be mindful of how they will be perceived, both on and off the job. If staff only discuss cases for legitimate, work-related reasons, and are mindful to avoid gossip or sensationalizing facts of cases, they will protect the court’s obligations to be neutral and impartial

**XVII. Self-Represented Litigants - Judicial Techniques, Protocols, and Other Practical Issues**

- A. General principles and judicial techniques for all cases involving pro se litigants
  - 1. Ten effective courtroom techniques for dealing with self-represented litigants
    - a. Framing the subject matter of the hearing
    - b. Explaining the process that will be followed
    - c. Eliciting needed information from litigants
      - i. Allowing litigants to make initial presentations to the court
      - ii. Breaking the hearing into topics
    - d. Eliciting needed information from litigants
      - i. Obviously moving back and forth between the parties
      - ii. Paraphrasing
      - iii. Maintaining control of the courtroom
      - iv. Giving litigants an opportunity to be heard while constraining the scope and length of their presentations, and
      - v. Giving litigants a last opportunity to add information before announcing a decision
    - e. Engaging litigants in the decision making
    - f. Articulating the decision from the bench
    - g. Explaining the decision
    - h. Summarizing the terms of the order
    - i. Anticipating and resolving issues with compliance
    - j. Providing a written order at the close of the hearing
    - k. Setting litigant expectations for next steps
  - 2. Special due process considerations
    - a. Ensure proper service of all court documents (Civ.R.4)

- b. Ex parte communications to the Court
- c. Information in internal court systems
- d. Minimize risks of due process violations
- 3. Communication skills
  - a. Communication challenges with self-represented litigants
  - b. Word content, formality, and overall language level
    - i. The importance of understandable terms and definitions
    - ii. Formal versus informal speech
    - iii. Language level as a barrier, a diagnostic tool, and a solution
    - iv. Value of written materials
    - v. Recognizing the literacy barrier
    - vi. Overcoming the literacy barrier
  - c. Increasing listener comprehension
    - i. Setting ground rules
    - ii. Providing a mental map
    - iii. Using repetition
    - iv. Using paraphrasing
    - v. Asking questions to clarify comprehension
  - d. Nonverbal communication
    - i. Cultural context of nonverbal communication
    - ii. Paths of nonverbal communication
    - iii. Effective nonverbal communication
  - e. Effective listening techniques
    - i. Active listening: capturing and confirming the message
    - ii. Additional tips for better listening
    - iii. Constructive feedback for the listener
    - iv. Tips for helping others listen better
  - f. Potential external barriers to communication
    - i. Physiological and environmental factors
    - ii. Individual differences and assumptions
    - iii. Bias, both conscious and unconscious
  - g. Tools for dealing with cross-cultural communication issues
  - h. Special considerations when interacting with individuals with physical limitations or disabilities (e.g., visual, hearing impaired)—resources include the Supreme Court of Ohio Language Services Program Resources such as:
    - i. Telephonic Interpretation Bench Card
    - ii. Education Videos:
      - (1) Understanding Rule 88 for Judges & Court Personnel
      - (2) Cultural Misconceptions about Deaf People and the Challenge for the Courts
      - (3) The Role of Interpreters in the Legal System
    - iii. Forms Translation Project
    - iv. Interpreters in the Judicial System: A Handbook for Ohio Judges
    - v. Working With Foreign Language Interpreters in the Courtroom: A Benchcard for Judges
    - vi. Working with Interpreters for Deaf or Hard of Hearing Persons in the Courtroom (Electronic hearing assistance devices are an asset to the courtroom)
    - vii. Report on the Use of Interpreters in Ohio Courts
    - viii. "Here Are Your Right Hands: Exploring Interpreter Qualifications" (University of Dayton Law Review)



- ix. "I Speak" Cards (A tool for identifying the language of individuals who do not speak English)
    - x. Superintendence Rules and Code of Professional Conduct for Court Interpreters and Translators Quick Reference Guide
  - 4. Maintaining fairness, neutrality, and unintended bias
    - a. The roots and dynamics of unintended bias
    - b. Social science and the dynamics of unintended bias
      - i. Categorization of and preference for people based on group identity
      - ii. Human brains encode information about groups of people into memories
      - iii. Humans strongly prefer persons from the same social category
      - iv. Humans tend to perceive "out-group" members as all the same
      - v. Preference for members of in-groups begins at an early age
      - vi. Human brains more readily process information that confirms our beliefs, attitudes, or stereotypes
      - vii. These early beliefs, attitudes, or stereotypes continue to exist at an unconscious level
      - viii. Implicit bias affects even nonverbal behavior
      - ix. Implicit bias increases under certain circumstances
      - x. Emotional state can also influence the tendency to implicit bias
    - c. Implications for the judicial fact-finding and decision-making process in cases involving self-represented litigants
    - d. Specific techniques to minimize implicit bias
      - i. Stay motivated to be fair and accurate
      - ii. Maximize accountability
      - iii. Take ample time
      - iv. Minimize distraction and pay attention
      - v. Be conscious of difference
      - vi. Think about thinking
      - vii. Confront cultural stereotypes
      - viii. Seek out images and social environments that challenge stereotypes
      - ix. Maintain constant vigilance
- B. General principles for handling cases involving more than one pro se litigant
  - 1. Swear all parties at the beginning of the proceeding
  - 2. Maintain strict control over the proceedings. Most self-represented litigants are respectful of the court and are capable of conducting themselves in a dignified manner
  - 3. Remain alert to imbalances of power in the courtroom
- C. Handling cases involving one represented and one unrepresented/pro se litigant
  - 1. Setting the stage:
    - a. Inform all participants that you will proceed informally in the case since one of the litigants is not represented
    - b. Assure counsel that s/he will be able to present and argue her or his client's case
    - c. But make it clear that you will ask whatever questions are necessary to learn the other party's case
    - d. Inform all participants that you are familiar with the rules of evidence and will give all evidence the weight that it deserves



- e. If there is a jury, you have a duty to protect the unrepresented party from prejudicial conduct by counsel for the represented party
  - f. Obtain needed information:
    - i. Proceed according to the ten techniques
    - ii. Invite each party to state her or his position
    - iii. Identify the topics to be resolved
    - iv. Proceed to obtain information relevant to each topic – from counsel for the represented and from the self-represented litigant
    - v. Remind counsel that you will accord evidence the weight it deserves
    - vi. Inform counsel that if s/he holds the self-represented party strictly to the rules of evidence you will hold her or him to the same standard
    - vii. Require counsel to state her or his objection completely enough to educate the self-represented party how to comply
  - g. Objections by counsel:
    - i. Remind counsel that you will accord evidence the weight it deserves
    - ii. Inform counsel that if s/he holds the self-represented party strictly to the rules of evidence you will hold her or him to the same standard
    - iii. Require counsel to state her or his objection completely enough to educate the self-represented party how to comply
    - iv. Allow counsel to ask preliminary questions to determine whether a foundation exists for a particular exhibit or statement
    - v. If counsel makes it impossible for the self-represented to state a case, warn counsel that you will consider granting a continuance *sua sponte* and seek *pro bono* counsel for the self-represented litigant
- D. Handling cases with the atypical litigant
- 1. Actions of individuals or groups that may pose a security risk (e.g., sovereign citizen extremists, overzealous court watchdogs)—descriptions, relevant background, incidents, typical methods and tactics that raise security issues (Refer to Administrative Duties: Operational Management curriculum design, specifically regarding Court and Personal Security)
  - 2. Addressing litigants in the courtroom who have mental health issues
    - a. Mentally or emotionally challenged litigants
      - i. Being explicit about what the court can and cannot do, and being respectful of the litigant's emotions, may help at least to move forward
      - ii. A calming understanding will help litigants get over their anxiety and focus on the substance
      - iii. Case structure that is manageable and understandable for all
      - iv. Breaking the case into small steps, explaining each one
      - v. To ask them to restate what they understand their obligations to be and to suggest the possibility of getting help from family or friends
      - vi. Other considerations:
        - (1) Strategies for responding to these challenges
          - The importance of case specificity
          - Responding to seriously impaired litigants
          - Dealing with the chronically mentally ill
          - Excessively frightened or paranoid litigants
          - Argumentative or “unhappy” litigants
          - The importance of disengagement and of saying “no” calmly
        - (2) Community resources
        - (3) Strategies for coping with difficult cases

- Keeping perspective
    - Avoiding isolation
  - b. Angry litigants
    - i. Appealing to the litigant’s sense of fairness may be of help
    - ii. Expressing sympathy with the intensity of the emotion may reduce the litigant’s alienation
    - iii. A potent consideration for the litigant may be that the case cannot proceed at the expressed level of emotion
    - iv. Offer a brief “cooling off” period, to allow litigant to regain control and then participate fully in the process
    - v. More stringent measures include adjournment
    - vi. Three-step process of explaining the concept of contempt, the sanctions authorized, and only then imposing the sanction
  - c. Determined self-represented litigants
    - i. Be explicitly respectful of the litigant’s right to self-represent and avoid any rush to judgment
    - ii. Explain that there are requests to which a court cannot accede if it is to remain neutral. Remind the litigant that the court cannot be a particular party’s attorney
    - iii. Inquire as to the reason for lack of counsel and to make an appropriate referral to a referral service, if pro se unable to find counsel
- E. Suggestions for complex trials and jury trials
  - 1. Complex trials such as parental termination involves complex documentary evidence, multiple witnesses, more difficult questions of law, and sometimes multiple parties; complex trials tips include:
    - a. When it seems too complicated to sort out a situation with a self-represented litigant, develop a nonlawyer approach equivalent to how the problem would be resolved if there were lawyers on both sides
    - b. Use pretrial conferences
    - c. Focus on documentary evidence and hearsay
    - d. Encourage getting assistance from law libraries, self-help programs, and trustworthy online resources to identify the governing law and understand courtroom procedure
    - e. Suggest the use of pretrial forms to organize testimony. Such forms help judges identify and resolve problems in advance
    - f. Use court staff to screen pleadings so that technical requirements, like joining necessary parties, are properly dealt with
    - g. Use pretrial conferences to make discovery less burdensome for both parties
  - 2. Jury trials tips
    - a. Explain very early the general concepts of motions in limine and offers of proof, and establish clear procedures for resolving issues outside the presence of the jury, including the making and resolving of objections
    - b. Use chambers conferences at all stages for legal and procedural questions that might require discussion. Such conferences should obviously be on the record, or, if not possible, summarized later for the records without the jury present
    - c. Tell the jury pool of the party’s self-represented status and the jurors’ responsibilities not to draw inferences from it or from whatever might occur during jury selection

- d. Explain (possibly in writing, and as early as possible) the party's jury selection rights and procedure, and allow their full exercise
- e. In initial instructions to the selected jury, address the litigant's status and its consequences
- f. Make sure that the self-represented party knows and understands the governing rules for opening and closing statements. It might be helpful to review in chambers planned statements for appropriateness
- g. When the judge does intervene, consider mentioning the prior reference to the likelihood of intervention and repeating the importance of lack of inference
- h. Consider how best to protect the self-represented litigant's right to cross-examination
- i. Give self-represented litigants plenty of notice about their right to present requested jury instructions. Let them know of available pattern instructions
- j. After any verdict, make sure that the self-represented litigant is aware of procedural requirements to preserve and pursue appellate rights or to protect against loss of their victory on appeal

## **XVIII. Parent/Grandparent Agreements - Statutory Requirements and Procedures**

### **A. Overview**

1. Ohio law provides for two legal filings that permit grandparents under each to assume authority over a grandchild's education and health care when the parent(s) are temporarily unable to perform these responsibilities. Specifically, the grandparent is authorized to enroll a grandchild in school, obtain from the school district educational and behavioral information, and consent to all school matters; and consent to medical, psychological, and dental treatment. These forms are: Power of Attorney (R.C. 3109.51 – R.C. 3109.62) and Caretaker Authorization Affidavit (R.C. 3109.65 – R.C. 3109.73)
2. The first legal filing is a Grandparent Power of Attorney according to the Revised Code sections 3109.52-3109.62. This filing is appropriate when a parent, legal guardian, or custodian of the child grants a grandparent power of attorney to a grandparent who has physical custody of their child. Both parent, guardian, or custodian and grandparent agree that grandparent should have the authority to make decisions and care for the child and both execute the grandparent power of attorney.
3. The second filing is a Caretaker Authorization Affidavit according to R.C. 3109.65 - 3109.73. This filing is appropriate when a grandparent has physical custody of their grandchild, wishes to obtain the rights over their grandchild provided in a Grandparent Power of Attorney, but cannot obtain the consent of the child's parents, legal guardian, or custodian after making reasonable attempts to locate and contact them. It should be noted that only grandparents execute the Caretaker Authorization Affidavit because the child's parents, guardian, or custodian cannot be located.
4. It should be noted that neither filing grants legal custody of the child to a grandparent. Rather, it gives a grandparent the legal authority to make decisions and care for the child while the child is in grandparent's physical custody.

### **B. Power of Attorney (POA):**

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1. Form/content must be identical to the form set out in the statute (R.C. 3109.53)
2. Signed by the parent(s), and grandparent; notarized (R.C. 3109.54)
3. Both parents must execute Power of Attorney, when (R.C. 3109.56(A):
  - a) Married and living together
  - b) Child is subject to a shared parenting plan
  - c) Child is subject to a custody order issued under R.C. 3109.04, unless
    - i. One parent is prohibited from receiving notice of relocation (R.C. 3109.051) – or
    - ii. Parental rights terminated in a Juvenile Court proceeding (R.C. Chapter 2151) – or
    - iii. Non-residential parent cannot be located with reasonable efforts
1. One parent may execute Power of Attorney, when (R.C. 3109.56(B)
  - a) That parent is designated residential parent/legal custodian by court order issued under R.C. 3109.04
  - b) Parent with whom child is residing the majority of school year in cases where no court has issued an order designating a parent residential parent/legal custodian – and – where R.C. 3109.042 does not apply
  - c) Parent to give notice to non-residential parent by certified mail, no later than 5 days after Power of Attorney created, which identifies the name and address of the grandparent/Attorney in Fact, unless: (R.C. 3109.55)
    - i. Other parent is prohibited from receiving notice of relocation (R.C. 3109.051)
    - ii. Parental rights terminated by Juvenile Court
    - iii. Cannot be located after reasonable attempts
2. Circumstances under which Power of Attorney may be executed (R.C. 3109.57)
  - a) A parent, guardian or custodian may create a Power of Attorney when that parent has a well-founded belief it is in the best interest of the child and that individual is
    - i. Seriously ill, incarcerated
    - ii. Temporarily unable to provide financial support or parental guidance
    - iii. Temporarily unable to provide adequate care and supervision due to physical or mental condition
    - iv. Homeless or without home because residence has been destroyed or uninhabitable
    - v. In or about to enter residential substance abuse treatment
  - b) Other parent is deceased
3. Military Power of Attorney (R.C. 3109.62)

A military Power of Attorney executed pursuant to Sec. 574(a) “National Defense Authorization Act for Fiscal Year 1994”, 107 Stat. 1674 (1993), 10 U.S.C. §1044b that grants a person the same authority concerning school and health care as permitted under this statute, shall be considered a Power of Attorney created pursuant to R.C. 3109.51 – R.C. 3109.61 as long as the military Power of Attorney remains in effect.
4. Terminating Power of Attorney (R.C. 3109.59)
  - a) Revoked in writing by parent(s) creating it
  - b) Notice to grandparent, with a copy to the Juvenile Court where Power of Attorney filed, no later than 5 days following revocation
  - c) Child ceases to reside with grandparent
  - d) By Court Order
  - e) Death of child

- f) Death of grandparent
- 5. Notification when Power of Attorney is revoked/terminated (R.C. 3109.60) The grandparent is to notify in writing, no later than 1 week after date Power of Attorney terminates
  - a) School district
  - b) Health care providers
  - c) Health insurance provider
  - d) Court where Power of Attorney filed
  - e) Non-residential parent who is required to be given notice under R.C. 3109.55
  - f) Any other person/entity relying on Power of Attorney authority
- C. Caretaker Authorization Affidavit (CAA) (R.C. 3109.65)
  - 1. Grandparent executes Caretaker Authorization Affidavit without parental authorization upon attesting:
    - a) Reasonable but unsuccessful attempts to contact/locate parents, or
    - b) Not required to locate parent if
      - 1. Paternity has not been established
      - 2. Child is subject to a custody order but that parent is prohibited from receiving relocation notice (R.C. 3109.051)
      - 3. Parental rights have been terminated in Juvenile Court
  - 2. Form of Affidavit to be identical in form/content in statute (R.C. 3109.66)
  - 3. Caretaker Authorization Affidavit is executed when the form is completed, signed and notarized (R.C. 3109.67)
  - 4. Termination of Caretaker Authorization Affidavit, whichever first occurs (R.C. 3109.70)
    - a) Child ceases to live with grandparent
    - b) Parent, guardian or custodian negates, reverses, disapproves of grandparent action/decision and grandparent voluntarily returns child to physical custody of parent, guardian or custodian – or – grandparent fails to file a complaint to seek custody within 14 days after delivery of written notice of negation, reversal, disapproval
    - c) By court order
    - d) Death of child
    - e) Death of grandparent
  - 5. Required notifications by Grandparent when affidavit terminates, other than by death of grandparent (R.C. 3109.71)  
Grandparent to notify in writing within 1 week after the affidavit terminates
    - a) School district
    - b) Health care providers
    - c) Health insurance coverage provider
    - d) Court where Caretaker Authorization Affidavit filed
    - e) Any other person/entity relying on Caretaker Authorization Affidavit
  - 6. Negation, Reversal, Disapproval of Action/Decision of grandparent by parent, guardian or custodian (R.C. 3109.72)
    - a) The parent, guardian or custodian may disapprove unless negation, reversal, disapproval would jeopardize the life, health, safety of child
    - b) Must deliver by written notice to caretaker or person responding to caretaker's action or decision in reliance on the Caretaker Authorization Affidavit
    - c) The act to negate, reverse, disapprove of the action/decision, regardless of whether it is effective, terminates the Caretaker Authorization Affidavit as of

the date the caretaker returns the child – or – upon expiration of 14 days from delivery of written notice of the negation, reversal, disapproval, if caretaker has not filed a complaint in the interim

- D. Common Factors to Power of Attorney and Caretaker Authorization Affidavit [2, 3]
1. Child must be living with grandparent at time filed
  2. Filing requirements – Court may report to Child Protective Services (CPS) to investigate (R.C. 3109.74)
    - a) Document is filed in the Juvenile Court where grandparent resides or the court exercising prior jurisdiction over the child
    - b) Parent/s (Power of Attorney) or grandparent (CAA) to file document with court no later than five (5) days after creation/execution. May be sent to the court by certified mail
    - c) Power of Attorney/Caretaker Authorization Affidavit to be filed with UCCJEA child custody jurisdictional statement pursuant to R. C. 3127.23 (statute erroneously cites R.C. 3109.27, which has been repealed)
    - d) If grandparent previously convicted of neglect or abuse as disclosed in the child custody jurisdictional statement, the Court to inform Child Protective Services (CPS) to institute an investigation (R.C. 2151.421)
    - e) If court believes Power of Attorney/Caretaker Authorization Affidavit not in the best interest of the child, the court may report information to CPS, who is to investigate and report back to the Court in 30 days (can be extended to 45 days)
    - f) No filing fee is imposed for filing
  3. Proceedings that bar execution of Power of Attorney or Caretaker Authorization Affidavit (R.C. 3109.58, R.C. 3109.68)
    - a) Probate proceedings – guardianship or adoption
    - b) Juvenile proceedings
      1. Child in temporary custody, permanent custody, legal custody or planned permanent living arrangement with CPS
      2. Child subject to an ex parte temporary custody order not yet heard (R.C. 2151.31, R.C. 2151.314)
      3. Child under a temporary custody order issued under R.C. 2151.33
    - c) Domestic Relations proceedings – child of parents involved in pending divorce, dissolution, annulment, legal separation; or allocation of parental rights
  4. Neither document affects: (R.C. 3109.52, R.C. 3109.69, R.C. 3109.79)
    - a) Rights and responsibilities of parent, guardian or custodian
    - b) Does not grant legal custody to grandparent
    - c) Does not authorize consent to marry/adoption
    - d) Does not affect payee change to child support
    - e) Does not affect current child support orders, unless
      1. Court issues a new child support order
      2. Child Support Enforcement Agency (CSEA) issues a new administrative order
  5. Immunity of person relying on Power of Attorney or Caretaker Authorization Affidavit (R.C. 3109.73)
    - a) From both civil and criminal liability
    - b) Except, wanton, reckless or inconsistent with ordinary standard of care
  6. Only one Power of Attorney or Caretaker Authorization Affidavit may be in effect at the same time on the same child (R.C. 3109.80)
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7. Prohibited use of Power of Attorney or Caretaker Authorization Affidavit (R.C. 3109.78)  
No person shall execute Power of Attorney or Caretaker Authorization Affidavit for the purpose of a child's participation in academic or interscholastic athletic programs
  - a) To do so is a first degree misdemeanor violation, R.C. 2921.13, falsification
  - b) Rendering underlying Power of Attorney/Caretaker Authorization Affidavit voice *ab initio*
8. Request for Verification (R.C. 3109.75) – a person in charge of school admissions may inquire of the Court to verify the filing of a Power of Attorney or Caretaker Authorization Affidavit
9. Grandparent Rights after termination of physical custody under Power of Attorney or Caretaker Authorization Affidavit (R.C. 3109.76)
  - a) Within 14 days after written notice of revocation of Power of Attorney or termination of Caretaker Authorization Affidavit, or within 14 days after removal of child from grandparent's home, grandparent may file a complaint for custody under R.C. 2151.23(A)(2) or R.C. 2151.27 if the grandparent believes revocation/negation, reversal, disapproval, or removal is not in the best interest of the child
  - b) Pending hearing or decision on the complaint, the Juvenile Court may make any temporary disposition/orders it considers needed to protect BIC (R.C. 2151.33)
  - c) If parent, guardian or custodian revokes the Power of Attorney or terminates the Caretaker Authorization Affidavit, the grandparent may retain custody of the child until the 14 day period for filing a complaint under this section has expired; or if grandparent files a complaint, until the court issues orders otherwise.

**E. Parent/Grandparent Agreements - Statutory History/Changes**

1. Statutes governing Power of Attorney/Caretaker Authorization Affidavit initially effective July 20, 2004
2. Principal statutory changes made in HB 279 (129th GA) which became effective March 21, 2013
  - a) No automatic termination with lapse of time (1 year) (R.C. 3109.59 amended)
  - b) No second/subsequent filing required after 1 year that is set for hearing (R.C. 3109.76 repealed/replaced) by Grandparent Rights after Power of Attorney/Caretaker Authorization Affidavit revoked/terminated
  - c) No Bureau of Criminal Investigation (BCII) hearing on second/subsequent filing (R.C. 3109.77 repealed)

## **Parentage**

### **Educational Content:**

#### **I. Overview of Parentage**

- A. Ohio Parentage Act (OPA) of 1982 (Am. Sub. No. H.B. 245, 139 Ohio Laws, Part I, 2170)
  - 1. Modified version of Uniform Parentage Act (1973) which sought to establish a consistent rule on adjudicating paternity disputes
  - 2. Abolished classifications of legitimate and illegitimate children
  - 3. Extends parent-child relationship equally to all children and all parents regardless of parents' marital status
  - 4. Consistent with prior U.S. Supreme Court decisions that hold that illegitimate children whose parentage has been legally determined and their fathers have same rights and obligations as legitimate children and their fathers (children born outside of a marriage granted "legal equality" with children born during a marriage)
  - 5. Sets forth who has standing to bring parentage action
- B. "Parent-child relationship" is the legal relationship that exists between a child and the child's natural and adoptive parents and others upon whom rights, duties, privileges and obligations are imposed. (R.C. 3111.01)
  - 1. Maternity: The mother-child relationship
  - 2. Paternity: The father-child relationship

#### **II. Paternity as a Function of Child Support Enforcement Agencies**

- A. Paternity establishment is a critical and primary function of child support program
- B. IV-D Funding
  - 1. Federal government awards Ohio Department of Job and Family Services-Ohio Office of Child Support (ODJFS-OCS) monetary compensation based on its performance
  - 2. OCS forwards portion of its compensation to each county based on how that county performed in that particular category
  - 3. State must maintain paternity establishment percentage (PEP) at 80% to receive full incentive funding
  - 4. Early paternity establishment essential aspect of program:  
Ohio partners vendor with birth facilities to assist in acknowledgment process
    - a. The Central Paternity Registry contracts with a vendor to outsource the administration, research, and services to local, state and federal agencies in child support
    - b. Based on findings that if mothers approached in maternity ward, fathers acknowledge paternity more readily
    - c. Financial incentive for hospital; perceived to have more cooperation by hospital staff since outsourced to a neutral party
  - 5. IV Funding consists of
    - a. Federal Financial Participation (FFP)
    - b. Performance based incentives



- i. Five federal performance measures used to measure effectiveness of state's child support program (42 U.S.C. 658a (b)(4) and 45 C.F.R. 305.1 et seq.)
  - (1) Paternity Establishment: Number of children born out of wedlock with paternity established divided by number of children born out of wedlock in the year
  - (2) Support Establishment: Child support cases with an order established divided by all child support cases.
  - (3) Collections on Current Support: Money collected for current child support divided by all money due for current child support
  - (4) Collections on arrears: Cases that have received a payment toward arrears divided by all cases that have an arrearage
  - (5) Cost effectiveness: Money collected divided by total money spent on program operation
- ii. State match allocation
- iii. County general revenue (if applicable)
- iv. Cash medical collections
- v. Administrative fees

### **III. Establishment of Parent/Child Relationship**

- A. Maternity established:
  - 1. By proof that mother gave birth to the child (R.C. 3111.02(A))
  - 2. By legal presumption as a result of embryo donation (R.C. 3111.97(A))
  - 3. By acknowledgment (R.C. 3111.20-3111.35)
  - 4. By administrative establishment (R.C. 3111.38-3111.611)
  - 5. By judicial process (R.C. 3111.01-3111.18)
  - 6. By adoption (R.C. Chapter 3107)
- B. Paternity established:
  - 1. By legal presumption as result of marriage, unfinalized acknowledgment, artificial insemination and embryo donation (R.C. 3111.03; R.C. 3111.95; R.C. 3111.97)
  - 2. By finalized acknowledgment (R.C. 3111.25)
  - 3. By administrative establishment (R.C. 3111.38-3111.611)
  - 4. By judicial process (R.C. 3111.01-3111.18)
  - 5. By adoption (R.C. Chapter 3107).

### **IV. Importance of Establishing Paternity**

- A. Rising numbers of unwed parents
- B. Lack of legal parents brings social stigma and severe economic penalties to child
- C. Protections and value for child, mother, and father
  - 1. Child's sense of identity and family heritage enhanced
    - a. Both parents are important and make a difference in children's lives
    - b. Advantages from relationship with both parents and both sides of extended family (child won't miss out from knowing grandparents, aunts, uncles, cousins)

- c. Child feels more safe and secure from sense of belonging, continuity, self-esteem, emotional support
    - d. Social and psychological benefits: Children with fathers in their lives are more likely/less likely to complete schooling, end up in jail, abuse substances, etc.
    - e. Legal recognition: Father's name will appear on birth certificate as legal father
    - f. "The earlier the truth about a child's identity is known and it is established with certainty, the better"
  - 2. Parental rights and responsibilities arise and attach
    - a. Emotional and psychological benefits of father bonding and being involved with child
      - i. "The right thing to do"
      - ii. The reward of contributing
      - iii. The opportunity to make a positive difference
    - b. Custody and parenting time (visitation)
      - i. Parental rights and responsibilities recognized
      - ii. Un-married female who gives birth is sole residential parent and legal custodian (R.C. 3109.042)
      - iii. Non-custodial parent can formally request custody and/or visitation rights (R.C. 2151.23, R.C. 3109.12)
    - c. Emotional and financial
      - i. Both parents will share emotional and financial responsibility and pressure of child-rearing, not go it alone ("it takes two to fairly raise a child")
      - ii. Eligibility to secure legal entitlements that flow from a parent such as Social Security, disability, veteran's benefits, pension, immigration, citizenship, and inheritance rights, etc.
      - iii. Parties can seek social welfare and public assistance if qualified
      - iv. Duty of child support attaches and availability of child support program services; critical first step in child support establishment process
    - d. Health care and medical support
      - i. Access to important needed family medical and biological history for managing child's care and treatment
      - ii. Access to health insurance
  - D. Societal Benefits
    - 1. Promotes family stability
    - 2. Better adjusted children
    - 3. Less financial burden as family less likely to receive public assistance
  - V. **Central Paternity Registry (CPR) (R.C. 3111.64-67)**
    - A. Operated by vendor under ODJFS-OCSE
    - B. Must maintain birth registry that includes following information from Acknowledgment of Paternity, and administrative or judicial order (R.C. 3111.64)
      - 1. Names of parents of child
      - 2. Name of child
      - 3. Resident address and social security number of each parent
-

- C. Birth registry accessible by CSEA through Support Enforcement Tracking System (SETS) (R.C. 3111.65)

## **VI. Science of Parent-Child Relationship Testing**

- A. DNA testing to determine whether two individuals have a biological parent-child relationship
- B. Presumptions become less important; DNA testing has rendered most legal practice and procedures obsolete
- C. “Genetic tests” and “genetic testing” includes testing to identify presence or absence of common blood group antigens, red blood cell antigens, human lymphocyte antigens, serum enzymes, serum proteins, genetic markers (R.C. 3111.09(E))
- D. Older scientific methods – helpful but limited
  1. Analysis of certain proteins and enzymes
  2. ABO blood grouping analysis based upon Mendelian genetics, tissue typing and other genetic factors
    - a. Markers: ABO, Mn, Rh, Human Leukocyte Antigen (HLA)
    - b. Useful in excluding potential fathers of certain blood types – can provide unequivocal evidence that a male is not the father
    - c. Limited because of necessity to obtain blood and poor ability to provide strong statistical evidence for include men.
  3. Human Leukocyte Antigen (HLA) now analyze by DNA methods. (Powerful and expensive, rarely used)
- E. DNA analysis and sequencing techniques
  1. Restriction fragment length polymorphism method: advent in 1980’s; Required large amounts of blood
  2. Polymerase chain reaction method: since 1990’s
    - a. Requires very small quantities of DNA because able to replicate and copy the DNA
    - b. Most advanced, accurate, and reliable technology available
  3. Widely available through laboratories
  4. Analysis: Once man is not excluded, how good is the match?
    - a. Can confirm parental relationship with degree of precision that is statistically significant
    - b. 100% accuracy in excluding a man as biological father
    - c. Typically 10 to 16 genetic systems (markers or loci) tested to check for matches between man and child. Additional loci can be used for difficult cases.
    - d. Each match produces a relationship index: a number that shows how strong the match is (higher number indicates stronger match)
    - e. Relationship indices are shown in a DNA Profile chart
    - f. Relationship indexes are multiplied to express Combined Parentage Index (CPI) which must be at least 100 for acceptance by a court of law
    - g. CPI converted to Probability of Paternity (POP): 0% when alleged parent is not related to child and up to 99.99% when the alleged parent is related to the child

- h. CPI of 100 translates to 99% POP; CPI of 1000 translates to 99.9% POP
  - i. 99.99% accuracy in determining a man to be biological father
  - j. POP cannot be expressed as 100% probability because that would imply entire male population tested
- 5. Special situations affecting test results
  - a. Identical twins, close relations
  - b. Rare genetic conditions that can result in false negatives
  - c. Cases presented by surrogacy, in vitro fertilization, hospital mix-ups (to prove maternity and paternity)
- 6. Testing Procedure
  - a. Reference samples can be mouth saliva, blood, semen, umbilical cord tissue, etc.
  - b. Buccal (inside of cheek) swab creates friction that loosens cells and is preferred because:
    - i. Reduced level of contamination
    - ii. Less invasive procedure
    - iii. Sample easy to obtain
  - c. Post-natal and pre-natal testing possible
    - i. Newborn child can be tested.
    - ii. Pregnant mother and child can be tested prior to birth as early as end of first trimester
    - iii. Pre-natal samples can be gathered by way of: amniocentesis, chorionic vilus sampling, SNP microarray (non-invasive test using baby's DNA naturally preserved in mother's bloodstream; has not stood up to admissibility challenges)
    - iv. Risks to mother and child and ethical risks attendant to pre-natal sampling: Is now really better than later?
  - d. "Motherless" testing and "reverse paternity determination" possible
    - i. When direct samples from parents not available (e.g., due to death or living in a foreign country)
    - ii. Samples can be taken from other relatives (grandparents, siblings, other offspring, etc.)
    - iii. Limitations
  - e. Suitable identification documents will be requested: photograph ID, Social Security cards, birth certificate or hospital birth letter, custody or guardianship papers if applicable
  - f. Results generally available within few weeks
- 7. Genetic tests must be made by qualified examiner authorized by court or Ohio Department of Job and Family Service (R.C. 3111.09(B)(1): AABB (formerly American Association of Blood Banks) is US-based professional and standards organization, and accrediting body for laboratories that perform parentage testing
- 8. DNA results admissible if follow a verified chain-of-custody
  - a. All tested parties must be properly identified and documented
  - b. Specimens must be collected by uninterested and unrelated third party professional
- 9. Home paternity kits not legally admissible because of unverified chain-of-custody deficiencies, but increasingly available and most often used:
  - a. To help determine whether to commence litigation
  - b. "Curiosity testing"
  - c. To provide peace of mind

**VII. Legal Presumptions of Paternity (R.C. 3111.03) - “A legal fiction”**

- A. Definition: Paternity presumption is a legally recognized assumption of fact based upon other facts that a man is the father of a child
- B. Legal theory and rationale behind development of paternity presumptions
  - 1. Common law: To promote legitimacy, protect family integrity and stability, preserve social order and property rights
  - 2. Developed at a time when paternity historically difficult to prove because medical testing not available and highly uncertain testimony regarding mother’s sexual relations. Proof prior to genetic testing based upon:
    - a. Testimony subject to cross-examination
    - b. Comparison of physical features and characteristics
    - c. Defense of impossibility: Exploration of “access” or lack of “access” by impotence or absence
    - d. Expert opinion concerning time of conception
- C. Three Primary Presumptions (R.C. 3111.03): A man is presumed to be the natural father of a child if:
  - 1. Two Presumptions related to marriage (roots in common law)
    - a. Child born during man’s marriage to mother, or within 300 days after marriage terminated (by death, annulment, divorce, dissolution), or after man and mother separate pursuant to separation agreement
    - b. Man and mother attempted marriage before child’s birth, marriage was solemnized in apparent compliance with state law, and marriage is or could be declared invalid, if either of following applies:
      - i. Marriage can only be declared invalid by a court and child is born during marriage or within 300 days after termination of marriage (by death, annulment, divorce, dissolution); or
      - ii. Attempted marriage is invalid without a court order and child is born within 300 days after termination of cohabitation
  - 2. Presumption related to acknowledging a child: Acknowledgement of Paternity Affidavit has been filed, but has not become final pursuant to statute
- D. Primary Presumptions are Rebuttable
  - 1. Burden of proof: By clear and convincing evidence
  - 2. Must include the results of genetic testing (R.C. 3111.03(B))
- E. When Presumptions Conflict: Court must determine, based upon logic and policy considerations, which presumption controls (R.C. 3111.03(B))
- F. Impact of Presumptions
  - 1. Paternity of most marital children established by marital presumption
  - 2. May contribute to paternity fraud (i.e., impact on public benefits)
  - 3. Social and medical consequences
- G. Other Presumptions (maternal and paternal): Parentage of children born as result of artificial insemination or embryo donation (response to 20th c. technological changes in way child can be conceived; not common law presumption)
  - 1. Artificial insemination (R.C. 3111.88-96)

- a. Statutory provisions only applicable to non-spousal artificial insemination (R.C. 3111.89)
  - b. Must be performed by or supervised by physician (R.C. 3111.90)
    - i. Physician must comply with R.C. 3111.93
    - ii. Physician must maintain confidential record (R.C.3111.94)
  - c. Woman who gives birth as result of artificial insemination deemed natural mother (R.C. 3111.02)
  - d. If married woman gives birth as result of non-spousal artificial insemination consented to by husband, husband conclusively deemed natural father (R.C. 3111.95(A))
  - e. Sperm donor conclusively deemed not to be natural father (R.C. 3111.95(A))
2. Embryo donation R.C. 3111.97
    - a. Woman who gives birth as result of embryo donation conclusively deemed natural mother (R.C. 3111.97(A))
    - b. Embryo donor not deemed parent and has no parental responsibilities (R.C. 3111.97(D))
    - c. If married woman gives birth as result of embryo donation consented to by husband, husband conclusively deemed natural father (R.C. 3111.97(B))
    - d. If married woman gives birth as result of embryo donation not consented to by husband (R.C. 3111.03(A)(1) or (2)) presumption arises that husband is natural father but may be rebutted (R.C. 3111.97(C)) by clear and convincing evidence that includes lack of consent to embryo donation
    - e. Other evolving science and changing policy/law

**VIII. Establishment of Paternity by Mutual Acknowledgement (R.C. 3111.20-R.C. 3111.35)**

- A. Entirely voluntary assumption of parental duties
  1. Recognizes role of choice
  2. Legal father-child obligations undertaken without actual proof
  3. Majority of paternities established in Ohio
- B. Parents sign Acknowledgment of Paternity Affidavit (“brown-colored paper affidavit”) (JFS 07038)
  1. Agree and affirm they are biological parents, choose to be named as legal parents and assume parental duty of support, and consent to jurisdiction of Ohio courts
  2. Only ODJFS-OCS officially printed forms are acceptable (photocopies not accepted)
  3. Both parents must sign or paternity cannot be established by this method
  4. Signatures must be notarized
  5. Signing parents waive rights to request determination of existence of parent-child relationship administratively (genetic testing) or through court action except for rescission action
  6. Should not be used unless both parents are certain that man is the biological father
  7. Cannot be signed if another man is legally presumed to be the natural father
  8. Possible at any time up to and including child’s 23rd birthday
  9. Free of charge

**C. Procedure:**

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1. ODJFS responsible for preparing:
  - a. Acknowledgment of Paternity Affidavit with Notice of Rights and Responsibilities and Due Process Safeguards, Purpose of Affidavit, and Instructions (R.C. 3111.31), and
  - b. Pamphlet explaining benefit of establishing paternity, proper procedure and toll-free number for information (R.C. 3111.32)
2. Form affidavit and pamphlet obtainable at three locations (R.C. 3111.33)
  - a. At hospital/birth facility at time of child's birth
  - b. At Child Support Enforcement Agency after child's birth
  - c. At local health department after child's birth
3. Document may be signed by parents at different times (no time limit on obtaining second parent's signature) (R.C. 3111.23)
4. Neither parent needs to be U.S. citizen
5. Required that child be born in Ohio or one or both parents live in Ohio
6. Document must be filed with ODJFS-OCS for entry into birth registry maintained by CPR within 10 calendar days of date of last notarized signature (R.C. 3111.22-3111.23)
7. Can be filed in person or by mail by:
  - a. Natural mother
  - b. Acknowledging man
  - c. Other custodian or guardian of child
  - d. CSEA
  - e. Local registrar of vital statistics
  - f. Hospital staff person
8. Document cannot be notarized or filed if person knows another man is legally presumed to be father (R.C. 3111.23)
9. Document can be signed by minor without parent or guardian's co-signature.
10. ODJFS-OCS examines document for completeness and accuracy within 5 days (R.C. 3111.24)
  - a. Erasures, cross-outs, white-outs or written-over information on form will render document null and void, must start over with blank affidavit
  - b. If rejected, document will be returned to the person or entity with notice of what needs to be corrected and amount of time allowed to correct and return it
  - c. 10 days allowed to correct and return document ODJFS-OCS
  - d. If not timely returned, or still incorrect when returned, ODJFS-OCS will send notice stating there are errors in the document, and that acknowledgment is invalid
  - e. If document is found to be correctly completed, ODJFS-OCS will enter information into Birth Registry and will send document to Department of Health for storage
11. Acknowledgment of Paternity is final and enforceable without court ratification when (R.C. 3111.25):
  - a. Acknowledgment filed with Office of Child Support
  - b. Information on Acknowledgment entered into Birth Registry
  - c. Acknowledgment not rescinded
  - d. Acknowledgment not subject to rescission
12. Effect of final and enforceable Acknowledgment (R.C. 3111.26)
  - a. Child is considered born to acknowledging man "as though in lawful wedlock"; no longer a presumption and cannot be rebutted
  - b. Father assumes parental duty of support



- c. If mother unmarried,
      - i. Father may request reasonable parenting time
      - ii. Parents of mother and father, and any relative of mother and father may request reasonable companionship or visitation rights
  - D. Administrative Rescission of Acknowledgment of Paternity (R.C. 3111.27-3111.28)
    - 1. Available to either signing parent
    - 2. Court action not required
    - 3. Requirements:
      - a. Time limitation: Within 60 days from date of last signature on Acknowledgment
      - b. Rescinding parent must:
        - i. Request that appropriate CSEA determine parent-child relationship (R.C. 3111.38)
        - ii. Give Office of Child Support written notice that timely request has been made and include in notice name of CSEA conducting genetic tests to determine parent-child relationship
      - c. Administrative order must issue determining whether there is a parent-child relationship
    - 4. Request for rescission begins at CSEA and commences administrative paternity determination process
    - 5. Parties must comply with genetic testing
  - E. Judicial Rescission of Acknowledgment of Paternity (R.C. 3111.28)
    - 1. Legal action to rescind a final and enforceable Acknowledgement of Paternity
    - 2. Final Acknowledgment of Paternity may be “unfinalized” if successfully rescinded in court
    - 3. Basis of action: fraud, duress or material mistake of fact
    - 4. Standing: May be brought by:
      - a. A man presumed to be the father of the child pursuant to R.C. 3111.03 who did not sign the Acknowledgement
      - b. Either person who signed the Acknowledgement
      - c. A guardian or legal custodian of the child
    - 5. Time limitation: Challenge must be brought within one year after acknowledgment becomes final and enforceable
    - 6. Action to rescind is treated as an action to determine the existence or nonexistence of a parent and child relationship
    - 7. Venue appropriate in juvenile court or domestic relations division that has jurisdiction under R.C. 2301.03 to hear and determine cases under R.C. Chapter 3111.
- IX. Establishment of Paternity by Administrative Process (Genetic testing required) (R.C. 3111.38)**
- A. Purpose/When used
    - 1. To establish paternity when biological parents have not agreed and father has not signed Acknowledgment of Paternity Affidavit
    - 2. Request can be made to determine existence or non-existence of parent and child relationship
    - 3. As prerequisite to establishing a support order
    - 4. Required for recipient of public assistance
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5. To specifically exclude presumed or alleged father
6. When parent(s) are genuinely not certain of paternity
7. When parent(s) not available to sign Acknowledgement
8. When paternity contested
9. Positive and negative results
  - a. Many people and relationships affected by outcome
  - b. Truth may be comforting or devastating
10. Along with Mutual Acknowledgement, represents vast majority of paternities established in Ohio
11. Applicable to Uniform Interstate Family Support Act Proceedings (UIFSA)

B. Process

1. Standing: Request for Administrative Establishment of Paternity may be made by:
  - a. Child or child's personal representative
  - b. Child's mother or mother's personal representative
  - c. Man alleged or alleging himself to be child's father
  - d. CSEA of county in which child resides if child's mother, father, or alleged father is recipient of public assistance or of Title IV-D services, or alleged father's personal representative
2. Proper venue to make determination
  - a. CSEA of county in which child resides or in which guardian or legal custodian of child resides
  - b. First CSEA to receive request, if more than one appropriate CSEA receives request concerning same child
  - c. Inappropriate CSEA receiving request required to forward it to CSEA of county in which child, or guardian or legal custodian of child resides
3. Required content of request
  - a. Name, birth-date, and current address of alleged father of child
  - b. Name, social security number, and current address of mother of child
  - c. Name and last known address of alleged father of child
  - d. Name and birth-date of child
4. Procedure for Issuing Order for Genetic Testing by CSEA
  - a. CSEA will assign administrative officer to consider request
  - b. Administrative officer will issue order requiring child, mother, and alleged father to submit to genetic testing
  - c. Order must be served according to Rules of Civil Procedure
  - d. Order will specify date of genetic tests for mother, alleged father, and child to be done within 45 days of assignment to administrative officer
  - e. Notice must be attached to each order for genetic testing and sent to both mother and alleged father, which states:
    - i. CSEA has been asked to determine existence of parent- child relationship between child and named father
    - ii. Name and birth-date of child of which man is alleged to be natural father
    - iii. Name of mother and alleged natural father
    - iv. Rights and responsibilities of a parent
    - v. Child, mother, and alleged father must submit to genetic testing at date, time, and place determined by CSEA
    - vi. Administrative procedure for determining existence of parent-child relationship

- vii. If alleged father or natural mother willfully fails to submit to genetic testing, or alleged father, natural mother, or the custodian of child willfully fails to submit child to genetic testing, CSEA will issue order that it is inconclusive whether the alleged father is child's natural father (JFS 07773)
      - viii. If alleged father or natural mother willfully fails to submit to genetic testing, or alleged father, natural mother, or custodian of child willfully fails to submit child to genetic testing, they may be found in contempt of court
    - f. Administrative officer may schedule conference to allow opportunity to sign Acknowledgement of Paternity Affidavit
    - g. Genetic tests must be conducted in accordance with rules adopted by ODJFS director for on-site testing including:
      - i. Provisions relating to environment in which blood or buccal cheek cell sample may be drawn
      - ii. Medical personnel who may draw a sample
      - iii. Trained personnel who may perform genetic comparison
      - iv. Types of genetic testing that may be performed on sample
      - v. Any other procedures or standards director determines necessary for implementation of on-site genetic testing
    - h. Testing
      - i. Child must come with identification (i.e. photo identification, social security cards, birth certificates, and/or birth letter from the hospital)
      - ii. Sample collected at CSEA
      - iii. Samples can be taken at different locations
      - iv. Cost of test paid by CSEA
      - v. Test consists of blood draw or buccal swab
      - vi. Newborns can be tested
      - vii. Results typically are issued upon receipt (generally 2 to 4 weeks)
- 5. Effect of Test Results:
  - a. If 99% or greater probability that alleged father is biological father CSEA will:
    - i. Issue Administrative Order for Establishment of Paternity (JFS 07774)
    - ii. Issue Administrative Order to Modify the Birth Record (JFS 07723) to CPR
    - iii. No later than ten days after issuing order determining existence or non-existence of parent-child relationship, CSEA shall send order along with completed "CSEA Transmittal Log" (JFS 07039) to CPR (CSEA may send orders in bulk)
    - iv. Issue notice of administrative hearing to begin support establishment process. (R.C. 3111.80)
  - b. If less than 99% probability that alleged father is biological father of child, CSEA will issue Administrative Order of Non-Existence of Parent-Child Relationship (JFS 07771)
  - c. If alleged father or natural mother willfully fails to submit to genetic testing or if either parent or any other person who is the custodian of child willfully fails to submit child to genetic testing, CSEA will enter administrative order "Paternity Finding Inconclusive" (JFS 07773)
  - d. Failure of mother or alleged father to cooperate in genetic testing can result in:

- i. Contempt of court. (R.C. 3111.42)
    - ii. Dismissal of proceeding
    - iii. Bringing of court action by CSEA to establish parent-child relationship
  - 6. Conclusiveness of Administrative Order and Right to Judicial Review
    - a. Order is conclusive unless judicially challenged within 30 days
    - b. Must include notices to mother, father, and guardian or legal custodian of child in Administrative Order of Existence or Non-existence of Parent-Child Relationship of:
      - i. Right to bring an action under R.C. 3111.01-3111.18 within thirty days after the date administrative officer issues the order, and
      - ii. That if the action is not brought within the 30-day period, administrative order is final and enforceable by a court and may not be challenged in an action or proceeding under R.C. Chapter 3111

**X. Establishment by Judicial Process and Order (R.C. 3111.01-3111.18)**

**A. Jurisdiction**

- 1. Subject Matter (Concurrent) R.C. 3111.06:
  - a. Action may be brought in juvenile court or other court with jurisdiction under R.C. 2101.022 or R.C. 2301.03 of county in which child, child's mother, or alleged father resides or is found
  - b. If alleged father deceased, action may be brought in county in which proceedings for probate of alleged father's estate has been or can be commenced
  - c. May be brought in county in which child being provided support by county
  - d. Action to object to administrative determination of parentage that has not become final may be brought only in county of CSEA that made determination
  - e. If action for divorce, dissolution or legal separation filed, that court has original jurisdiction during pendency of action to determine parent-child relation of child presumed to be child of marriage
- 2. Personal: Person who has sexual intercourse in this state submits to jurisdiction of courts with respect to child who may have been conceived by that act of intercourse.
  - a. May be acquired by any other method provided by Rules of Civil Procedure
  - b. May be acquired by service of summons outside state or by certified mail with proof of actual receipt.
- 3. Continuing jurisdiction: To modify or revoke order, except that a court may specify that judgment or order for the purchase of an annuity may not be modified or revoked. (R.C. 3111.16)

**B. Priority of Action: Court must give priority to actions under R.C. 3111.01- 3111.18**

- 1. Court must issue order determining existence or nonexistence of parent-child relationship no later than 120 days after date on which action brought
- 2. Supreme Court Statistical Reporting Forms (OSCR Juvenile Column I, Domestic Column J) specifies 12 month period for disposition of parentage actions.

**C. When Action May be Brought**

- 1. Statute of Limitation/Defense: No later than five years after child's 18th birthday. (R.C. 3111.05)

2. If brought during mother's pregnancy, stay contested proceedings, except (R.C. 3111.04):
    - a. Service of process not stayed
    - b. Depositions to perpetuate testimony not stayed
  3. Administrative determination of existence or nonexistence of parent-child relationship must precede court action (R.C. 3111.381):
    - a. Administrative determination not prerequisite:
      - i. If brought by child's mother to request allocation of parental rights and responsibilities, payment of reasonable expenses of mother's pregnancy and confinement, or support of child.
      - ii. If brought by putative father to request allocation of parental rights and responsibilities.
      - iii. If probate proceeding commenced for deceased alleged father, probate court has jurisdiction
      - iv. If divorce, dissolution, legal separation or action to establish support under R.C. 2151.231; R.C. 2151.232
    - b. IV-D application must be delivered to CSEA If court requests CSEA to determine existence or nonexistence of parent-child relationship under these exceptions
    - c. Clerk of court must forward copy of complaint to CSEA in county where complaint filed
- D. Standing to bring action (R.C. 3111.04)
1. Child or child's personal representative
  2. Child's mother or her personal representative
  3. Man alleged or alleging himself to be child's father, or alleged father's personal representative
  4. CSEA of county where child resides if child's mother, father, or alleged father is recipient of public assistance or IV-D services, including UIFSA action
  5. Any interested party may bring an action to establish a mother-child relationship
- E. Necessary Parties (R.C. 3111.07)
1. Natural mother
  2. Each man presumed to be father under R.C. 3111.03
  3. Each man alleged to be natural father
  4. Child, unless good cause shown
  5. Notice of action pursuant to Civil Rules and opportunity to be heard must be given to:
    - a. Parties not subject to the jurisdiction of the court.
    - b. CSEA of county where action is brought
  6. Court may align parties
  7. Any public agency or department may intervene for purposes of collecting or recovering the support
- F. Representation of parties
1. Rights of putative father and other parties differ in Domestic Relations and Juvenile courts
  2. Guardian ad Litem may be appointed for child (Civ.R. 75(B)(2))
  3. Separate counsel must be appointed for child if court finds that child's interests conflict with those of mother (R.C. 3111.07)

4. Court may fix compensation for appointed counsel and guardian ad litem (R.C. 3109.04)
  5. Right to Self-Representation and Access to Justice (Note: Cross-reference Self-Represented litigants curriculum design)
    - a. Historical perspective (pre-genetic testing)
    - b. Extent to which the Court may accommodate
      - i. Customer service Attitude
      - ii. Availability of Self-help Forms; Self Help Centers; Website
      - iii. Simple, easy-to-understand language in court-generated documents
      - iv. Explaining court procedure
      - v. Legal information vs. legal advice
    - c. How the self-represented party experiences the court process
      - i. Informed by perceptions, values, attitudes, language and communication, customs and religious beliefs
      - ii. Lack of Knowledge of court procedures
      - iii. Outcomes (positive/negative) of the process
    - d. Effect in individual case
    - e. Public perception of judicial system
- G. Proceedings
1. Actions governed by Civil Rules unless different procedure specifically provided
  2. Pre-trial conference required if person against whom action brought does not admit existence or nonexistence of father-child relationship in his answer (R.C. 3111.11)
    - a. Scheduled at a time set by the court
    - b. Matters to be addressed at pre-trial conference:
      - i. Notice that each party may file motion requesting genetic tests
      - ii. Notice of right to counsel
      - iii. Time needed to obtain genetic testing or other evidence
      - iv. Required time parameters for disposition of action
      - v. Effect of Service members Civil Relief Act
  3. Temporary Support Order (R.C. 3111.111): Court must issue temporary support order requiring alleged father to pay temporary support to natural mother, or guardian or legal custodian of child upon its own or parties' motion
    - a. Temporary order to remain in effect until judgment issued
    - b. Court must order person receiving support to repay alleged father if alleged father determined not to be natural father of child
  4. Admission (R.C. 3111.08): Court must enter judgment if person against whom action brought admits in his answer the existence or nonexistence of father-child relationship
  5. Default Judgment Permitted (R.C. 3111.08):
    - a. On oral or written motion
    - b. If the person against whom actions brought fails to plead or otherwise defend against the action
    - c. Pursuant to the Rules of Civil Procedure
    - d. After hearing satisfactory evidence of truth of statements in complaint
- H. Evidence of paternity or non-paternity (R.C. 3111.10)
1. Sexual intercourse between mother and alleged father at any possible time of conception

2. Expert's opinion concerning statistical probability of alleged father's paternity, based upon duration of the mother's pregnancy
3. Genetic test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity
  - a. Governed by R.C. 3111.09
  - b. Court may order genetic testing upon its own motion
  - c. Court shall order genetic testing upon party's motion
  - d. If CSEA not a party, the clerk of the court must schedule test within 30 days after the court issues its order
  - e. If CSEA a party, CSEA must schedule test in accordance with ODJFS rules
  - f. Failure to cooperate with order for genetic testing:
    - i. If action brought by alleged father and mother willfully fails to submit to genetic testing or if mother is custodian of child and willfully fails to submit child to genetic testing, on alleged father's motion, court must issue order determining existence of parent-child relationship without genetic testing
    - ii. If action brought by mother or child's guardian or custodian and alleged father willfully fails to submit himself to genetic testing or, if alleged father is custodian of child and willfully fails to submit child to genetic testing, court must issue order determining existence of parent-child relationship without genetic testing
    - iii. Failure not willful if party shows good cause for failing to submit
  - g. Payment of Fees for Genetic Testing:
    - i. Fees for tests must be paid by party requesting them (R.C. 3111.09), unless:
      - (1) Child's custodian represented by CSEA
      - (2) Custodian participates in Ohio Works First
      - (3) Defendant found to be indigent
      - (4) If exception applies, then CSEA must pay costs using Title IV-D funds
    - ii. If there is dispute as to payment of fees CSEA must pay fees
      - (1) CSEA or person who paid fees may seek reimbursement from person against whom court assesses costs
      - (2) Funds used by CSEA to pay fees for genetic testing are in addition to other funds that CSEA entitled to receive
      - (3) CSEA not required to pay if action brought to object to results of previous tests
  - h. Other DNA records court may use:
    - i. DNA record of child's mother, child, alleged father, or other defendant stored in DNA database pursuant to R.C. 109.573; Must order superintendent of bureau of criminal identification and investigation to disclose information court intends to use
    - ii. Results of genetic tests conducted on child, child's mother, alleged father, or other defendant in administrative proceeding to establish paternity; Must order agency that ordered tests to provide report of test results that court intends to use
  - i. Tests must be made by qualified examiners authorized by court or ODJFS
  - j. Examiner must send report of test results to clerk of court or to CSEA if a party

- k. Clerk of court must send genetic test reports or DNA record reports to parties or counsel including notice that objection to admissibility of report must be made in writing within 14 days after report was mailed
    - l. Party may produce other expert evidence, but other expert witness fees must be paid by party calling expert (ordinary witness fees taxed as costs)
  - 4. Medical evidence (other than genetic test results) relating to alleged father's paternity of child based on tests performed by experts
    - a. If a man identified as a possible father, court may, and upon the request of a party shall, require child, mother, and man to submit to appropriate tests
    - b. Fees charged for tests must be paid by requesting party unless taxed as costs
  - 5. Other relevant evidence of paternity/non-paternity, such as:
    - a. Child resembles father
    - b. Admitted being father of child
    - c. Sent cards/letters regarding pregnancy and/or about child
    - d. Was present at birth of child
    - e. Visited child at hospital following birth
    - f. Offered to pay medical/birth related expenses
    - g. Offered to pay abortion expenses
    - h. Claimed child on tax returns
    - i. Provided food, clothing, gifts or financial support for child
    - j. Lived with child
    - k. Visited child
    - l. Witnesses to relationship with mother
- I. Witnesses and other evidentiary matters (R.C. 3111.12)
  - 1. Mother and alleged father competent to testify and may be compelled to testify by subpoena
  - 2. Refusal to testify on grounds of self-incrimination
    - a. Court may compel testimony
    - b. Court may grant immunity from having testimony used against witness in subsequent criminal proceedings
  - 3. Testimony of a physician concerning medical circumstances of mother's pregnancy and condition and characteristics of child upon birth not privileged
  - 4. Testimony relating to sexual access to mother by man at time other than probable time of conception inadmissible, unless offered by mother
  - 5. Party may object to orders for genetic testing, disclosure of information regarding DNA record stored in DNA database, or use of report of genetic test results
    - a. Must be in writing
    - b. Must send a copy to all parties
    - c. If filed, report of the test results or DNA record information admissible into evidence as provided by Rules of Evidence
    - d. If written objection not filed, report of test results or DNA record information admissible into evidence without foundation testimony or other proof of authenticity or accuracy
  - 6. Advance written notice required of intent to introduce evidence to show amounts expended to cover pregnancy and confinement and genetic testing
    - a. Must include copies of invoices and documents.
    - b. Party may object to admission of invoices or documents by filing written objection no later than 14 days after notice mailed



- c. If written objection filed, invoices and other documents admissible under Rules of Evidence.
  - d. If a written objection is not filed, invoices or other documents admissible without foundation testimony or other evidence of authenticity or accuracy
- J. Judgment and its Effects (R.C. 3111.13)
- 1. Order determining existence or nonexistence of parent-child relationship determinative for all purposes
    - a. Must send order to CPR in ODJFS-OCSE (R.C. 3111.66)
    - b. CPR sends order to Department of Health after entry in birth registry
  - 2. Judgment may include support order if requested by a party, including:
    - a. Payment of all or part of reasonable expenses for pregnancy confinement
    - b. Orders pertaining to duty of support
      - i. Support order may be for periodic payment
      - ii. In the best interest of child, may order purchase of annuity in lieu of periodic payments if purchase agreement provides for remaining principal to be transferred to child upon attaining age of majority.
      - iii. Court must follow provisions of R.C. Chapters 3119, 3121, 3123 and 3125
    - c. Ordering support for time periods prior to adjudication or for pregnancy/confinement expenses (limitations, requirements, defenses):
      - i. Must consider all relevant factors, including monetary contribution for support either parent made prior to order
      - ii. Must not require payment if:
        - (1) Child over three years old at the time of filing, and
        - (2) Alleged father had no knowledge and no reason to have knowledge of his alleged paternity
        - (3) Mother may establish by preponderance of evidence that father had or should have had knowledge of paternity by showing that she performed reasonable and documented effort to contact and notify him of his paternity
    - d. Party is entitled to obtain modification of existing order for arrearages (R.C. 3111.13(F)(3)(c); but see *Smith v. Smith* 2006-Ohio-2419, wherein R.C. 3111.13(F)(3) declared unconstitutional as applied)
    - e. Enforcement of Support Order (R.C. 3111.15)
      - i. Obligation may be enforced in same or other proceeding by mother, child, or public authority that furnished or is furnishing support
      - ii. Court may order payment to be made to mother, clerk of court, or person or agency designated to administer order
      - iii. Willful failure to support is civil contempt
      - iv. Any person found in contempt for failure to comply with support order shall be ordered to pay court costs and reasonable attorney fees of adverse party (R.C. 3111.13(F)(1))
  - 3. After entry of judgment father may petition that he be designated residential parent and legal custodian or for parenting time in a separate proceeding (R.C. 3111.13(C))
  - 4. If mother unmarried, father may file complaint for reasonable parenting time, and grandparents or other relatives may file a complaint requesting reasonable companionship or visitation rights under R.C. 3109.12
  - 5. Pursuant to R.C. 3111.13(C), the court may determine the surname by which the child is to be known after establishment of the existence of the parent and child



relationship upon a showing that the name determination is in the child's best interest. *Bobo v. Jewell*, 38 Ohio St. 3d 330 (1988); and *In re Willhite*, 85 Ohio St. 3d 28 (1999).

6. Order must include provisions for payment of reasonable expert fees, and other costs, including genetic tests in proportions and at times determined by court (R.C. 3111.13, R.C. 3111.14)
  7. Order must include full names, addresses, and social security numbers of mother and father, and full name and address of child unless court has reason to believe that any person named in order is potential victim of domestic violence.
- K. As far as is practical, same provisions applicable to father-child relationship shall apply to action to establish mother-child relationship (R.C. 3111.17)
- L. First Degree Misdemeanor to interfere with or attempt to prevent another person's initiating or continuing a parentage action by using physical harassment or threats of violence (R.C. 3111.19, R.C. 3111.99)

**XI. Relief from Paternity Determination (R.C. 3119.961-.967)**

- A. Applies to final judgment, court order, administrative determination or order that determines person or male minor is father of child (R.C. 3119.961)
- B. Process independent of Civ.R. 60(B) (R.C. 3119.961)
- C. Filed in division of court of common pleas in county in which original judgment, court order or child support order was made, or administrative determination or order made (R.C. 3119.961)
1. If determination based on acknowledgement that has become final, must be filed in juvenile court or other court with jurisdiction of county in which person or child subject of acknowledgement resides
  2. Court may transfer case to county of adverse party if location of original venue presents hardship
- D. Court must grant relief to person or male minor if:
1. Court receive genetic test results from test administered no more than 6 months before filing that finds 0% probability of fatherhood
  2. Person or male minor has not adopted child
  3. Child not conceived as result of artificial insemination in compliance with R.C. 3111.88-3111.96
- E. Court must not deny relief if person or male minor did not know he was not natural father at the time any of the following acts occurred:
1. He was required to support child by child support order
  2. He validly signed birth certificate as informant as provided in R.C. 3705.09 as existed prior to 01/01/1998
  3. He was named in acknowledgement of paternity of child that court entered upon its journal pursuant to former R.C. 2105.18, repealed in Am.Sub. H.B. No. 352, 147 Ohio Laws, Part II, 2606.
  4. He was named in acknowledgement of paternity that has become final
  5. He was presumed to be natural father under R.C. 3111.03 and certain divisions under former R.C. 3111.03
  6. He was determined to be father in parentage action under R.C. Chapter 3111

7. He otherwise admitted or acknowledged himself to be the child's natural father
- F. Court must not grant relief if court determined by preponderance of evidence that person knew he was not the natural father before any of the following:
  1. He was required to support child by child support order
  2. He validly signed birth certificate as informant as provided in R.C. 3705.09 as existed prior to 01/01/1998
  3. He was named in acknowledgement of paternity of child that court entered upon its journal pursuant to former R.C. 2105.18, repealed in Am.Sub. H.B. No. 352, 147 Ohio Laws, Part II, 2606.
  4. He was named in Acknowledgement of Paternity Affidavit that has become final
  5. He was presumed to be natural father under R.C. 3111.03(A)(3) as it existed prior 01/01/1998, or after that date but prior to 03/22/2001
  6. He is presumed to be natural father under R.C. 3111.03(A)(1) to (A)(3)
  7. He otherwise admitted or acknowledged himself to be the child's natural father
- G. If relief from judgment granted from acknowledgment that has become final, court must:
  1. Order acknowledgment rescinded and destroyed
  2. Order ODJFS to remove all information related to acknowledgment from birth registry
- H. Requirements concerning court ordered genetic tests on motion for relief from judgment (R.C. 3119.963)
  1. Court has discretion to order genetic tests if test results submitted in connection with relief motion solely provided by moving party, but must order if requested by party
  2. Clerk of court must schedule genetic testing no later than 30 days after ordered
  3. Court must rule on motion for relief against any party who willfully fails to submit to genetic testing, unless good cause shown for such failure
  4. Fees for genetic test
    - a. Party requesting genetic test must pay fees, but CSEA to pay fees if custodial parent represented by CSEA
    - b. CSEA or other person paying fees may seek reimbursement from person against whom court cost adjudged
  5. Genetic test must be made by qualified examiner authorized by court or ODJFS, or by lab accredited by ASBB
  6. Examiner must send complete report of test results to clerk of court
- I. Effects of Granting Relief from Judgment
  1. Court must determine whether any orders granting companionship or visitation rights should be terminated, modified or continued (R.C. 3119.964)
  2. Court may issue order canceling support arrears (R.C. 3119.964)
  3. Person or male minor relieved from judgment may bring action to recover support paid under terminated child support order (R.C. 3119.964)
  4. Granting motion for relief does not preclude any person from filing subsequent action to determine parent-child relation between same child and person or male minor granted relief (R.C. 3119.965)
    - a. Only one such action per person/per 2 year period
    - b. Court may determine existence of parent-child relationship only if genetic test done after relief granted shows statistical probability of existence of parent-child relationship

**XII. Birth Records Following Establishment of Parent-Child Relationship**

- A. “Certificate of Live Birth” (OAC 3701-5-02, Appendix A)) to be filed within 10 days of birth with Ohio Department of Health, Division of Vital Statistics (R.C. 3705.09)
  - 1. Data source based on legal records for important statistical measures used in public health, planning and community analysis
  - 2. Information stored permanently
  - 3. Birth in or en route to institution
    - a. Person in charge of institution or designated representative responsible for obtaining personal information, preparing certificate, securing signatures and filing
    - b. Physician in attendance must provide medical information and certify facts within 72 hours
  - 4. Birth outside institution  
Physician in attendance at or immediately after birth, any other person in attendance at or immediately after birth, father, mother, person in charge of premises where birth occurred, in that order of priority responsible for preparing certificate
  - 5. Birth in moving conveyance
    - a. If child first removed from conveyance in this state
    - b. If born in international waters or airspace, record shall show actual place
  - 6. Parents or other informant(s) must attest to accuracy of personal information of birth as can be determined
- B. Prior to January 1, 1998, man could sign birth certificate as “father” but doing so did not establish paternity
- C. When mother married at time of child’s birth or during 300 days prior to birth (R.C. 3705.09(F)(1))
  - 1. Mother designates child’s surname
  - 2. Husband’s name goes on child’s birth certificate as father based on legal presumption, even if husband is not child’s biological father (R.C. 3705.09(F)(1))
  - 3. Unless mother and husband were divorced during pregnancy and divorce decree states husband is not father (Mother should provide birth facility of copy of divorce decree)
- D. When mother unmarried at time of child’s conception or birth or between conception and birth and there is no document naming paternal parent (acknowledgment, administrative order, or court order) (R.C. 3705.09(F)(2))
  - 1. Mother names child and designates surname but naming child after father does not establish paternity and confers no legal rights
  - 2. Birth certificate will list mother’s name only
  - 3. Father’s name cannot be inserted into birth certificate unless both parents sign acknowledgment of paternity before certificate is sent to Division of Vital Statistics
- E. After parent-child relationship later established by presumption, acknowledgment, or adjudication

1. By acknowledgement: If mother's name only on birth certificate and paternity later being established by acknowledgment, parents have option to change child's legal name at time Acknowledgment of Paternity Affidavit completed, unless different father listed on original birth certificate (R.C. 3111.22)
  - a. Box must be checked on Acknowledgment of Paternity Affidavit
  - b. New name stated
2. By Determination (court or CSEA): Order must be submitted by court (HEA 3029) or CSEA (JFS O7723) to CPR and Department of Health
  - a. Authorizes changes to birth record to add father's information and/or change child's surname; (R.C. 3111.52)
  - b. Must be certified by CSEA or court
3. New birth record has same overall appearance as birth record that would have issued if marriage had occurred before child's birth (R.C. 3705.09(G))
4. Once new birth record created, original birth record and all supporting documentation placed in envelope under seal and ceases to be a public record (R.C. 3705.09(G))
5. New birth certificate prepared by Department of Health and forwarded to local registrar of vital statistics; all copies of original birth record in possession of local registrar or probate court sealed (R.C. 3705.09(G))
6. Changes/corrections to birth record not associated with establishment of paternity must be done in probate court

### **XIII. Assisted Reproductive Technologies (ART)**

- A. Artificial Insemination
  1. Defined as introduction of semen into vagina, cervical canal, or uterus through instruments or other artificial means (R.C. 3111.88)
  2. Non-spousal artificial insemination of a married woman creates conclusive presumption that her husband is the father of the child
  3. Judicial or administrative action cannot be brought to establish parentage, but parties can sign voluntary acknowledgment of paternity where parties unmarried
- B. Embryo donation (R.C. 3111.97):  
Donated embryo implanted in woman for purpose of woman bearing child she intends to raise as her own
- C. Surrogacy/Gestational mother; Art. 8, Uniform Parentage Act of 2002 (UPA 2002)
  1. Traditional vs. Gestational
    - a. Traditional surrogacy – Surrogate's egg impregnated by artificial insemination results in genetic link between the surrogate and the child
    - b. Gestational surrogacy- pre-formed embryo implanted into surrogate
  2. "Surrogate" in ART refers to woman impregnated in order to bear a child she does not intend to raise as her own
    - a. No Ohio statutory definition
    - b. UPA 2002 suggests changing name to "Gestational mother"
      - i. Ordinary meaning of "surrogate" not descriptive of the intent
      - ii. Term "gestational mother" would apply to both traditional and gestational surrogacy
  3. No statutory authority in Ohio specifically governing "surrogacy"
  4. Surrogacy Contract (Gestational Agreement)
    - a. Gestational surrogacy contract enforceable

- (*J.F. v. D.B.*, 116 Ohio St.3d 363, 2007-Ohio-6750)
- i. Surrogacy contract may rebut presumption of parent-child relationship between child and birth mother (*S.N. v. M.B.*, 2010-Ohio-2479 (10th Dist.))
  - ii. Surrogacy contract may be unenforceable as violation of public policy (*J.F. v. D.B.*, 116 Ohio St.3d 363, 2007-Ohio-6750, dissent)
  - b. Ohio law unsettled as to enforceability of traditional surrogacy contract
5. Pre-Birth Order (Validation of Gestational Agreement)
- a. May be necessary in traditional surrogacy because DNA that of birth mother
  - b. Action to determine parent-child relationship before birth of child under R.C. 3111.04(C) not stayed if uncontested.
  - c. Probate court lacks subject matter jurisdiction to issue declaratory judgment as to parentage of child yet unborn to gestational surrogate (*Nemcek v. Paskey*, 137 Ohio Misc. 2d 1, 2006-Ohio-2059(P.C.))
  - d. Pre-birth order (judicial validation of Gestational Agreement) would determine parents for inclusion on birth certificate upon child's birth

# Delinquency and Unruly



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## **Delinquency and Unruly**

### **Educational Content:**

#### **I. The Juvenile Court is Established by Statute: Purpose and History**

The jurisdiction of the Juvenile Court is subject to the determination of the Legislature. See *In re Agler*, 19 Ohio St.2d 70 (1969). Its purpose is fully set forth in R.C. 2151.01. Historically the philosophy of juvenile justice system focuses more on rehabilitation as opposed to the adult justice system that focuses more on punishment. The general rationale for this approach is that children are in the process of maturing and are more likely to engage in poor decision making. As such, dispositional orders are designed to encourage better decision making of child in the future, while also providing consequences for behavior that necessitated court's intervention.

#### **II. Jurisdiction of the Juvenile Court Over Delinquency and Unruly Charges**

The Juvenile Court has original and exclusive jurisdiction over any person under the age of 18 at the time of the offense that is a charge of delinquency or unruliness (R.C. 2151.23(A)(1); R.C. 2152.02(C)(1)). It also has jurisdiction of cases involving the classification of a juvenile as a juvenile sex offender (R.C. 2151.23 (A)(15); R.C. 2152.191). Juveniles under the age of 18 who are mistakenly charged in the adult court must also be transferred to the exclusive jurisdiction of the juvenile court. (R.C. 2152.03; R.C. 2152.12(H)). A juvenile over the age of 18 who violates a protection order during in effect before the age of 18 is also subject to the continuing and exclusive jurisdiction of the Juvenile Court (R.C. 2152.02(C)(8); R.C. 2919.27; R.C. 3113.31). The Juvenile Court has jurisdiction to hold hearings on juveniles between age 18 and age 21 if the offense was committed before age 18, and also if the offense was committed after age 18 for a violation of a previous juvenile court order or juvenile probation (R.C. 2152.02(C)(2); R.C. 2152.02(C)(6)).

Juvenile Court loses jurisdiction over a particular charge after a juvenile is transferred to the adult jurisdiction by means of the Ohio bindover process (R.C. 2151.23(H), R.C. 2152.12(I), R.C. 2152.02(C)(4)). During the bindover process the juvenile court retains jurisdiction for purposes of confinement in juvenile detention (R.C. 2152.02(C)(7)). Upon bindover, and under certain specific circumstance, the adult court must return a bound over juvenile back to the jurisdiction of the juvenile court for further hearings (R.C. 2152.121).

Juvenile Court also loses jurisdiction over a particular juvenile after invoking the adult portion of a blended sentence in a Serious Youthful Offender case (R.C. 2152.02(C)(5); R.C. 2152.14(F)).

There is no jurisdiction if a juvenile is alleged to have committed a felony but is not arrested until after age 21. The case is heard in adult court automatically (R.C. 2151.23(I); R.C. 2152.02(C)(3); R.C. 2152.12(J)).

Juvenile Court also has jurisdiction arising from an offense committed out-of-state if procedures of interstate agreements are followed. See Interstate Compact on Juveniles (R.C. 2151.23(A)(7); R.C. 2151.56 *et seq.*).

When considering the venue between Ohio counties, and subject to some court discretion, the trials are held in the county where offense occurred and the witnesses are located, and dispositions are held in county where the juvenile lives (R.C. 2151.271; Juv.R. 11).

The Juvenile Court's jurisdiction to hold a hearing or act on a charge generally terminates upon the juvenile's 21st birthday (R.C. 2152.02(C)(6)). There are certain exceptions including: the sealing and expungement hearings (R.C. 2151.357); sex offender periodic reclassification hearings (R.C. 2152.84; R.C. 2152.85); and statutory clerical errors apparently allowing placement after age 21 in jail (R.C. 2152.02(C)(6); R.C. 2152.26(F)(2)).

Dispositions extending beyond age 21 are generally prohibited (R.C. 2152.22(A)) with certain exceptions, including juvenile sex offender registration periods that may be 10 years, 20 years, or lifelong (R.C. 2907.03(B); R.C. 2152.191) and invoking adult sentences under SYO provisions (R.C. 2152.14).

### **III. Restraints**

Restraints in the courtroom are disfavored. Local rules must set forth that there is a presumption that restraints should not be used. Restraints can be used, however, if the Court determines, on the record, that the child represents a current and significant threat or significant risk of flight and the appropriate level of restraint. The Court must allow the opportunity for the party to be heard and order the least restrictive restraint necessary (Sup.R. 5.01).

### **IV. Jurisdiction of the Juvenile Court Over Parents and Certain Other Adults**

The Juvenile Court also has original and exclusive jurisdiction over adults charged with a criminal violation of any section of the Juvenile Code (R.C. 2151.23(A)(5)). That includes parents of delinquent/unruly/traffic offender children (R.C. 2151.23(A)(14); R.C. 2152.61) and adults charged with misdemeanor child endangerment, contributing to the delinquency or tending to cause the unruliness of a child (R.C. 2151.23(A)(6)). The Juvenile Court has concurrent original jurisdiction with other courts over any adult charged with a misdemeanor concerning a child (R.C. 2151.23(A)(15)).

### **V. Statutory Definitions and Procedural Elements of Initial Filings of Complaints and Appearances**

A Delinquent Child is defined by statute and rule (R.C. 2152.02(E) and Juv.R. 2(K)). Procedurally it is important to understand the types of disposition orders that are permitted (R.C. 2152.19 but not exclusive), and to have a basic understanding of the Ohio Criminal Code (Chapter 29 of Revised Code).

An Unruly Child is considered a "status offense" as provided by statute and rule (R.C. 2151.022 and Juv.R. 2(UU)). Procedurally it is important to understand the types of disposition orders that are permitted (R.C. 2151.354) because they differ from those in delinquency cases.

Some offenses such as "tobacco offenses", involving the underage use of tobacco, are not considered delinquency or unruly offenses.

The filing for a complaint in Juvenile Court is governed by Juv.R. 10(A). The form of the complaint must be under oath, identify the parent(s), set forth the essential facts (Juv.R. 10(B)) and provide notice to the victim. If a child is detained a detention hearing must be held within 72 hours of detention.

Upon the filing of a complaint the case may be transferred to or from another county as provided by Juv.R. 11.

Differentiated case management tracks such as diversion and other informal resolutions may also be considered. The Court should have reliable processes in place for establishing the criteria and decision-making process. Approaches such as referral to a community provider, mediation, “heard and submitted”, or truancy supervision may also be appropriate. When considering the options the Court should consider the complexity of the case.

## **VI. Initial Appearances to Adjudicatory Hearings**

Upon the filing of a Complaint an Initial Appearance should be held. A summons needs to be issued. (Juv.R. 15(A)). The child, parents and other necessary parties should be served with notice of hearing ((R.C. 2151.28(C), Juv.R. 16(A)). Waiver of the notice of hearing is also permitted (Juv.R. 16(B)).

It is important to pay attention to whether the case involves a child placed in detention. If a child has been placed in detention the Court should hold the detention hearing with 72 hours as required. If the detention hearing has not been held then the Initial Appearance within that 72-hour period may address those detention notices. Upon hearing the child and parents should be clearly advised of the child’s constitutional rights and the possible penalties (Juv. R. 29).

The child is also entitled to court-appointed counsel. There is a presumption of indigency where the child is concerned (O.A.C 120-1-03 (B)(4)). A financial disclosure form should still be filed with the Clerk of Courts to ensure that the appropriate administrative and procedural aspects of court reimbursement are well-handled. The court appointment relies upon the child’s income, however, and not the income of the custodial parent. Parents are, however, subject to a recoupment procedure for the attorney’s fees for their child (O.A.C 120-1-03-(C)(5)).

Where felony charges are concerned there must be an opportunity for the child to have a consultation with an attorney, outside the presence of the parents, before an attorney can be waived (Juv.R. 3(C)). As a practical matter, if an attorney for the child is not present at the initial appearance on a felony charge, an attorney will be appointed and a denial of the charges should be entered upon the record by the Court and reasonable time permitted for court-appointed counsel to advise the child.

There are circumstances where a child cannot waive the right to an attorney. It is mandatory that a child have an attorney during the bindover process to the adult court (Juv.R. 3(A)(1) or for Serious Youth Offender (SYO) proceedings Juv.R. 3(A)(2). A conflict with the parent(s) also requires the appointment of an attorney (Juv.R. 3(A)(3)).

When considering the appropriateness of accepting an admission or plea of no contest, when permitted, the National Center for State Courts’ Institute for Court Management Leadership Fundamental #6 – Early Disposition publication is recommended for the Court’s consideration.

An “Alford Plea” (example: “I’m pleading guilty to get this over with but I really didn’t do it”) are not permitted in Juvenile Court. See *North Carolina v. Alford*, 400 U.S. 25 (1970) and *In re Kirby*, 101 Ohio St.3d 312, 2004-Ohio-970.

For children who are over 18 years of age the child must still have a supportive parent or mandatory attorney present before accepting a plea (*In re Andrew*, 119 Ohio St.3d 466, 2008-Ohio-4791).

An attorney is also required for the child at all competency related hearings (R.C. 2152.51(C).)

## **VII. Pre-Adjudicatory Issues**

Prior to adjudication it is important for the Court to determine whether a child has been taken into custody. The Court should consider the definition of detention (Juv.R. 2(M)), when the custodial detention occurred (Juv.R. 6) and considerations of whether shelter care is or should be involved (Juv.R. 7). The Court may also impose non-custodial release restrictions such as no contact orders, house arrest, ankle monitoring or similar limitations.

Competency issues may be raised to determine if the child is competent to be adjudicated. A mental examination as ordered by the court will occur. If the child is not competent the case may be dismissed or other alternatives considered as provided by statute (see R.C. 2152.51 to 2152.59). If the child is found incompetent but restorable within the statutory timeframe, the Court may order the juvenile to participate in a competency attainment plan. See R.C. 2152.59

Bindover proceedings seeking to transfer the case to the adult court or Reverse Bindover proceedings transferring a case back to the Juvenile Court from the adult court may also occur (R.C. 2152.10, R.C. 2152.12, Juv.R. 30).

Serious Youth Offender proceedings (R.C. 2151.11 and R.C. 2152.13) may also be filed.

Prehearing motions (Juv.R. 19 and Juv.R. 22), such as Motions to Suppress to exclude the introduction of confessions and the seizure of evidence, are common. The timing of these motions is important (Juv.R. 22(E)). The State has the right to appeal adverse decisions (Juv.R. 22(F)).

The Court should also consider the appointment of a Guardian ad litem (R.C. 2151.281 and Juv.R. 4(B) and Sup.R. 48) to protect the child's best interest and/or where there is a parent-child conflict. The Court should also be mindful of potential Attorney/GAL conflicts and consider those issues appropriately.

Juvenile delinquency and unruly hearings are open hearings. The open or closure of a hearing is often the subject of prehearing filing. There are procedures and standards to close the hearings to the media and the public. See R.C. 2151.35, Ohio Superintendence Rule 12, and Ohio Juvenile Rule 27; *State ex rel. Plain Dealer Publishing Co. v. Floyd*, 111 Ohio St.3d 56, 2006-Ohio-4437). The open versus closed hearing issues often arise in high profile cases. Local rules should be adopted to outline the process for considering when and whether a hearing will be closed. The closure of the hearing requires the appropriate findings and statutory and case law considerations. Gag orders and orders not to identify particular witnesses, case participants or the like may also be issued.

## **VIII. Adjudicatory hearing**

The child, parents and other necessary parties are entitled to proper notice of the adjudicatory hearing. Prehearing motions should be timely resolved prior to hearing (Juv.R. 19 and Juv.R. 22(D)). It is also important to make sure the proper victims are notified of hearing as provided by Marsy's Laws and that there is a reasonable opportunity for the victim to provide a written input statement.

It is not unusual for a pro se party to require assistance for pretrial filings and issuances of subpoenas. Parents are often involved in assisting a child in these routine matters. Parents, however, are not permitted to practice law or formally represent the child and care must be taken to properly supervise their role. It is also prudent to allow additional time for hearings involving pro se parties. Providing standardized forms with appropriate instructions on how to complete the form can also minimize inappropriate or confusing filings.

The rights to, or necessity of, counsel and the acceptance of a plea are the same as those outlined in Section VI, Initial Appearance, above.

Upon hearing the Court must find that the State has met its burden of proof beyond a reasonable doubt or the complaint must be dismissed. The Judge may communicate the decision verbally and explain the ruling to the child and parents/custodians. A written decision should be filed. The Court should carefully weigh the necessity/prudence of the extent of its written findings and the explanation of its decision to ensure a clear understanding by the parties and, importantly, the Court of Appeals.

There is a special rule for juveniles not available to adults that allows for the dismissal of a charge even if it is proven—if it is in the best interests of the community or child to dismiss the charge. It is somewhat controversial, is widespread and is used inconsistently. It gives wide discretion to juvenile judges but can be misused (Juv.R. 29(F)).

#### **IV. Trial Skills**

The Judge's role is to determine issues of fact and to keep a record of the hearing. A Judge should be well versed in the proper use of expert testimony. The Judge and court staff are responsible for the courtroom management of the parties and counsel. Courtroom security should be ensured. The appropriate role of the parents, as non-attorneys, should be supervised.

Case flow management is essential. Appropriate time frames and time management are necessary. The following publications may be of assistance in meeting those goals: the National Center for State Courts' Institute for Court Management Leadership Fundamental #3 - Court Supervision and the National Center for State Courts' Institute for Court Management Leadership Fundamental #5 – Controlling Continuances.

A Judge must have a solid working knowledge of the Rules of Evidence and an understanding of how to apply them at the adjudicatory hearing. Issues such as hearsay, opinion testimony, witness competency/age, cross examination and statements during treatment/assessment are a few of the common issues raised. Evid.R. 807 is also a significant rule to be considered in cases involving sexual abuse of a child.

The Court should specifically note the findings that are (or are not) evidence of proof beyond a reasonable doubt. It's also important for the Judge to properly relate those finding to the specific elements of the offense.

– Ruling on Motions/Submitted Cases and may be of assistance. Issuing timely decisions is also important as noted in Sup.R. 40 – Ruling on Motions/Submitted Cases. The Court should keep in mind that it is writing a decision that may be reviewed by the Court of Appeals.

#### **X. Disposition and Consequences in Unruly Cases**

Dispositions alternatives for Unruly cases are outlined in R.C. 2151.354. Disposition cannot include fines or detention. Dispositions in unruly cases can also include the same types of disposition allowed for abuse, neglect, and dependency matters (R.C. 2151.354(A)(1), R.C. 2151.353). The Court can order community control (R.C. 2151.354(A)(2)). It can suspend an driver's license (R.C. 2151.354(A)(3)) and provide notification to Bureau of Motor Vehicles. When necessary, the Court itself, can take custody of a child (R.C. 2151.354(A)(4)). It can order alcohol and drug related counseling (R.C. 2151.354(B)).

The Court can order up to seven days of detention for an unruly juvenile only for a violation of a valid court order. See the federal Juvenile Justice and Delinquency Prevention Act and the Juvenile Justice Reauthorization Act (2018).

If a child is habitually truant the Court can order multiple educational related orders (R.C. 2151.354(C)) and, if the parents are found at fault, parental orders are also allowed (R.C. 2151.354(C)(2)).

Communicating to child and parent(s) regarding consequences that should be enforced at home is appropriate, such as parents enforcing operator's license restrictions, community control, counseling, etc.

#### **XI. Disposition and Consequences in Delinquency cases**

As a preliminary matter the Court should decide whether the disposition shall occur immediately after the adjudication or plea or at a later date. (See National Center for State Courts' Institute for Court Management Leadership Fundamental #3 – Court Supervision).

A disposition is an informal hearing and hearsay is allowed. The Court has the option to order mental or physical examinations, drug assessments and social histories. A Court must allow victim impact statements.

The Court may impose fines, costs and restitution. Fines may range from \$50 to \$2,000 depending on the level of the offense (R.C. 2152.20(A)(1)). Costs may be assessed (R.C. 2152.20(A)(2)). Restitution can be ordered including a work program that provides a benefit to the victim and/or self-pay (R.C. 2152.20(A)(3)). Failure to pay the restitution can result in a Court order reducing the unpaid restitution to a judgment that continues to be valid after the child reaches the age of 21, if journalized by the Court before the age of 21. Community service can be ordered in lieu of fines and costs (R.C. 2152.20(D)).

The Court may also impose detention of up to 90 days (R.C. 2152.19(A)(3)) in a licensed juvenile only facility. Multiple charges can result in the imposition of consecutive or concurrent detention sentences as determined by the Court. The Court should review the purpose of detention in reaching its decision including, but not limited, severity of the offense, repeat offending, flight risk, risk to self, risk to other and whether less restrictive alternatives are available.



Community Control (R.C. 2152.19(A)(4)) can be an appropriate in many cases and can include basic or intensive probation, community Service from 30 to 500 hours depending on level of offense (R.C. 2152.19(A)(4)(d)), house arrest/electronic monitoring (R.C. 2152.19(A)(4)(k)), driver's license suspensions or restrictions (R.C. 2152.19(A)(4)(l)), violation of habitual truancy orders (R.C. 2152.19(A)(7)) and any order the court "deems proper" (R.C. 2152.19(A)(8)).

In cases where a felony has been committed the Court may order a commitment to the Department of Youth Services (DYS). The term of the commitment ranges from a minimum of 6 months to the maximum age of 21 depending upon the level of the felony. Additional time can be ordered for offenses with a gun specification of one to five years (R.C. 2152.17) or gang involvement of one to three years (R.C. 2152.17(C)).

The Court's DYS sentences can be consecutive sentences for multiple felonies (R.C. 2152.17(E)) and should include credit for confinement (R.C. 2152.18(B)).

Once committed to DYS the child has the opportunity for Early Release that may include options of releasing the child to court supervision (R.C. 2152.22(B)) or releasing the child to DYS supervision (R.C. 2152.22(C)). There are provisions for determining who may request the release (R.C. 2152.22(B)(2)). The Court may grant a release upon request by having a hearing within 30 days or denying it without a hearing.

Releases are further governed by the Release Authority process (R.C. 5139.51) that can include parole with DYS. After the minimum commitment the Court must approve the parole rules.

When considering dispositions, the Court should have an understanding of mental health/substance abuse assessments and reports, issues involving mental health diagnosis and juveniles, substance abuse and treatment, gender specific conditions and treatments and educational orders.

Payment of school tuition (R.C. 2151.362) should be addressed where detention or commitment are ordered setting forth the school district that is responsible for tuition costs while in confinement.

The legal immigration status of a child is an issue that should also not be overlooked when considering disposition alternatives.

"Heard and Submitted" dispositions are also appropriate in many cases. See (Juv.R. 29(F)(2)(d)).

Dispositional orders should advise the child of right to appeal and to have appellate counsel (Juv.R. 34(J)). The child must also be advised of the right to the possible sealing and expungement of the child's record (R.C. 2151.356 (D)(2)).

As part of a disposition there can be a need for placement/specialized treatment, including Public Services Children's Agency orders per (R.C. 2151.353), court placement or private treatment. A central issue when considering these options is possible funding and/or who will pay.

When issuing a dispositional order, the Court should clearly communicate the consequences to child and parent(s). Additionally, the parents should be encouraged to take responsibility for consequences at home including such things as enforcing operator's license restrictions, community control, curfews, counseling, etc. A careful wording of entries to minimize



the need for the delinquent to come back to the court for violation hearings is prudent (see National Center for State Courts' Institute for Court Management Leadership Fundamental #3 – Court Supervision).

Dispositions in probation violation hearings are invoked by a motion in the underlying case (Juv.R. 35(A)) and should continue to apply the same principles as previously discussed. It is also prudent to consider when ongoing conflicts of interest are occurring involving probation offices as court employees.

Delinquencies, violations of Court orders or further unruly charges may also result in the imposition of previously suspended sentences in prior cases.

## **XII. Consequences for Parents and other Adults**

Parents can and often are charged with criminal offenses as well as other adults in the court. The “Failure to Send Child to School” (R.C. 3321.19; R.C. 3321.38; R.C. 3321.99), the “Contributing to Delinquency or Unruliness” because their child is still not going to school (R.C. 2919.24) Misdemeanor 1st degree, the contempt for not controlling child on probation etc. as ordered (R.C. 2152.61; R.C. Chapter 2705) and Educational neglect (R.C. 2919.222) Misdemeanor 4th degree are authorized.

Non-parent adults can also be charged with criminal conduct. Adults can be charged in juvenile court with a misdemeanor where there is child victim such as “Contributing to Delinquency or Unruliness of any child (R.C. 2919.24) a Misdemeanor 1st degree, Child endangerment (R.C. 2919.22) a Misdemeanor 1st degree, Contributing to child becoming dependent (R.C. 2919.21) a Misdemeanor 1st degree, and Interference with custody (R.C. 2919.23) a Misdemeanor 1st or 3rd degree.

The consequences of a 1<sup>st</sup> degree misdemeanor conviction include up to \$1,000 fine and/or 180 days in jail. This conviction can never be sealed if the child is the victim (R.C. 2953.32(A.d)). These types of convictions weigh heavily in future custody cases (R.C. 2151.414(E); R.C. 3109.04(F); R.C. 3109.051). A conviction is likely to result in loss of professional licenses, limit coaching, teaching, nursing and other practices involving youth.

A parent's acts toward their children may result in abuse, neglect or dependency filings neglect filings alleging that the child is without proper parental care (R.C. 2151.05), the child is Dependent child (R.C. 2151.04), the child is a Neglected child (R.C. 2151.03) and/or that the child is an Abused child (R.C. 2151.031)

Further dispositions or convictions can often result in the violations of other valid court orders.

## **XIII. Transfer of Delinquency cases to adult court/relinquishment of jurisdiction (R.C. 2152.12 and Juv.R. 30)**

A juvenile's delinquency case can be transferred to the adult court. Upon successfully transfer the Juvenile Court loses jurisdiction of the matter unless it is returned to the Juvenile Court as part of the adult court's reverse bindover process.

A child must be 14 years of age and the subject of a felony for a bind over process to occur. The Court is required to appoint an attorney for the child (Juv.R. 4).

The Court must hold a probable cause hearing (R.C. 2152.12(A) and find that the offense has been committed and the juvenile is the person that was involved.

There are two types of transfers, discretionary and mandatory.

A Discretionary transfer requires a Mental Health examination under R.C. 2152.12(C) and Juv.R. 30(C). The Child may waive the examination (R.C. 2152.12(C)) but the waiver must be competently and intelligently made (Juv.R. 30(F)).

An Amenability hearing (R.C. 2152.12(B)(3)) is also required. Written notice of the hearing is required (R.C. 2152.12(G)). The Court must weigh the statutory factors in favor of transfer (R.C. 2152.12(D)) against the statutory factors against transfer (R.C. 2152.12(E)). The Rules of Evidence apply.

The Court must provide reasons for transfer (R.C. 2152.12(I) and Juv.R. 30(G)) and maintain a record of the proceedings.

If the Court transfers the juvenile it must set bail under Criminal Rule 46 (Juv.R. 30(H)) and transfer to adult jail with conditions (R.C. 2152.26). This is not a final appealable order and the juvenile must wait for further adult proceedings.

A Reverse Bindover (R.C. 2152.12; R.C. 2152.121) can occur after the case is transferred to the adult court based on a mandatory transfer and subsequently the juvenile's conviction or plea is to a non-mandatory or discretionary transferable offense in the adult court. The case is then returned by the adult court back to the Juvenile Court for disposition. This disposition may include consideration of Serious Youthful Offender status and considerations or objections relating thereto. If the case is not transferred back to the Juvenile Court and is retained by the adult court, then the juvenile file will be expunged.

The Serious Youthful Offender ("SYO") (R.C. 2152.13) process involves the notice by the prosecutor of the intent to seek a Serious Youthful Offender dispositional sentence (R.C. 2152.13(B)). This notice must be filed within 20 days of the complaint or within 20 days after the court denies the motion to transfer to the adult court. The process also involves the prosecutor obtaining an indictment from the Grand Jury or a Bill of Information (R.C. 2152.13(C)(1); R.C. 2152.13(A)(2)). The Court is required to appoint Counsel (R.C. 2152.13(C)(2)). A probable cause hearing is required (R.C. 2152.13(C)(1)) and the right to raise competency applies (R.C. 2152.13(C)(2)).

In SYO cases there is a right to jury trial to determine guilty or not guilty (R.C. 2152.13(C)(1)). It is a public hearing (R.C. 2152.13(C)(1)). It must be heard by a Judge, not a magistrate (Juv.R. 40(C)(1)) and the Criminal Rules apply.

The result of a successful SYO prosecution is that a Blended Sentence (R.C. 2152.13(D)) is ordered that involves both an adult and a juvenile sentence. There is a Mandatory disposition required for certain offenses (R.C. 2152.13(D)(1)) where the court has no discretion and must impose both the adult and juvenile sentences. In other cases the disposition is Discretionary (R.C. 2152.13(D)(2)) and the Judge must decide whether both sentences or just a juvenile sentence are to be imposed. For a discretionary blended sentence the Court must find that a juvenile disposition alone would be inadequate.

If the child receives a blended sentence the Court must order a sentence just like as with an adult and must meet all the requirements and notices of adult sentencing. The Court then specifically stays the adult sentence pending successful completion of juvenile disposition (R.C. 2152.13(D)(2)) that is imposed by the Court.

The adult sentence can be invoked (R.C. 2152.14) by the juvenile court upon motion of DYS for violation of institutional rules that create a substantial risk, by the prosecutor's office in the county in which the juvenile court that imposed the disposition is located, or the juvenile court on its own motion. The adult sentence can also be invoked as a result of violations of the conditions of supervision that create a substantial risk upon a hearing to revoke (R.C. 2152.14), and for committing an act that could be charged as a felony or first degree misdemeanor offense of violence if committed by an adult.

**XIV. A juvenile may be classified as a Juvenile Sex Offender (JSO) by the Juvenile Court (R.C. 2152.82 to 2152.86)**

At the Initial Appearance, when a charge involves an offense that would subject an adult to classification as a Sex Offender, the Court is required to explain to the child that the child may be subject to classification as a Juvenile Sex Offender along with an explanation of the registry and possible classifications.

The Classification system has the same three tier system as adults. Tier One requires the child to register annually for 10 year and there is no community notification or Internet publication. Tier Two requires the child to register every 6 months for 20 years and there is no community notification or Internet publication. Tier Three requires the child to register every 90 days for life and the Judge decides community notification and there is no Internet publication.

Note that for the Public Registry Qualified Juvenile Offender Registrant (PRQOR) (R.C. 2152.86 the automatic mandatory lifetime classification of certain juveniles as PRQJORS is now unconstitutional. Youth are not subject to automatic/offense based classification and cannot be subject to mandatory lifetime registration. Youth registrants cannot have their registration published on eSorn (even after they turn 18 (See *In re C.P.*, 131 Ohio St 3d 513, 2012-Ohio-1446).

A Classification Hearing must be held at the time of initial disposition (R.C. 2152.83 and R.C. 2152.831) if the Offender has had prior sex adjudication or if the child is a first time offender and is not being placed in a secure facility. If the child is being placed in a secure facility the classification may be held at the time of release from the secure facility.

The Tier level is discretionary with the Judge in all cases.

Classification is discretionary if the Offender is age 14 or 15 and has no prior sex offenses. The Court must consider the statutory factors (R.C. 2152.83(D)) and the Judge has the option to decline to classify or to classify at one of three levels.

Classification is Mandatory if the Offender is age 16 or 17 or has a prior sex offense. The Judge must classify at one of the three levels.

Classification Review hearings (R.C. 2152.84 and 2152.85) can then periodically reviewed.

If the classification was discretionary, the Offender can request a review upon completion of the initial disposition such as probation and can continue to request review 3 years after the end

of disposition, then 3 more years after that and then every 5 years thereafter (R.C. 2152.85). Upon review the Court can continue, change or terminate the classification tier.

If the classification was mandatory the same time periods and choices apply. See *In re D.R.*, 2022-Ohio-4493 holding that for age 16 and 17 year olds who are mandatory registrant, R.C. 2152.84 is unconstitutional, in violation of due process, because it does not allow the juvenile court to consider removing those youth from the registry if they are a tier I JOR—the registration simply follows them into adulthood. Courts have discretion to determine whether to remove those youth as well.

The choices are summarized as follows\*:

<b>Discretionary Registrants</b>	<b>Mandatory Registrants</b>	<b>End-of-Disposition</b>	<b>Petition for Declassification</b>
R.C. 2152.83(B)	R.C. 2152.82 and 2152.83(A)	R.C. 2152.84	2152.85
At Disposition	For repeat offenders, occurs at disposition	Upon discharge from probation or parole	At three and then five-year intervals
Or upon release from secured facility	For first offense, occurs upon release from secure facility	All registrants can come off registry	All registrants can come of registry
Court can decline to hold a hearing	Court must hold a hearing	Tier can't increase	Tier can't increase
Discretion for tier	Discretion for tier		

\*credit for table goes to the Juvenile Sex Offender Registration Webinar October 20, 2023

## **XV. Sealing and Expungement of Records**

The Court is responsible for the proper sealing and expungement of its records and knowledge of that process is important (R.C. 2151.355 to 2151.358). In some cases the process is automatic (R.C. 2151.356(B)). In other cases it may be granted upon motion after 6 months (R.C. 2151.356(C)).

The Court may request an investigation to determine if the request is appropriate (R.C. 2151.356(C)). The prosecutor must be notified of the motion (R.C. 2151.356(C)). If the prosecutor objects a hearing should be held (R.C. 2151.356(C)). The process has certain limitations to be considered. Note this process is distinct from the dismissals that may be granted in certain cases (Juv.R. 29(F)(2)(d)).

The granting of the sealing and expungement of a record has an important effect upon law enforcement records and other agency records. The Court is required to send notice to the appropriate agencies which are then, in turn, also required to expunge the information from their records. Confidentiality of juvenile records is discussed in R.C. 2151.357 and Sup.R. 44. The Ohio Attorney General's Bureau of Criminal Investigation (BCI) also has procedures to determine what juvenile records it will release (R.C. 109.57(E) and (F)).

## **XVI. Case Management Considerations**

The fundamentals of good case management are mentioned throughout this curriculum. Judicial leadership and vision require the proper consideration of the formal and informal processing of cases, the staff resources for actively monitoring of community control cases, and the development of a case management plan (Sup.R. 5).

Consultation with partners in the justice system is also important. Periodic meetings with the local bar on case management trends or issues can be helpful. Periodic meetings with community organizations, service providers, schools, etc. should be considered.

The Court is responsible for the supervision of its caseload. Standards and goals should be set, keeping in mind measurable time standards and expected reports to meet both the Court's goals and satisfying the Supreme Court reporting requirements. A regular process of review of the data for management decisions is important.

Continuances should be consistently managed and local rules established for governing the treatment of continuances (Sup.R. 5 and Sup.R. 41). Continuances should be tracked on the file.

Early dispositions are desirable, when appropriate, and periodically examination of the outcome data and case types/DCM tracks should be reviewed with staff to ensure a robust system.

Information systems are essential to achieving management goals. Consider how you use your case management system to provide data that will drive your management decisions. Are you able to extract the necessary data/information? If not, consider modifications to the system to achieve your goals. What reports do you routinely expect on the standards you have established? Are the reports automated or manually generated? Consider developing a data dashboard for internal use to make sure your system is working for you. Consider establishing a differentiated case management system for cases requiring little judicial attention, cases requiring moderate judicial attention, and cases requiring extensive judicial attention.

## **XVII. Magistrates (Juv.R. 40)**

The use of a Magistrate requires an Order of reference appointing the Magistrate to a specific case or, more usually, to a general order of class or issues.

Pretrial and hearings require the recording of proceedings (Juv.R. 40(D)).

Upon hearing a Magistrate will issue a Decision and Recommendation to the Judge. Establish a tracking system to promote timely filing of decisions (National Center for State Courts' Institute for Court Management Leadership Fundamental 4 – Standards and Goals).

Objections to the Magistrate's Decision and Recommendation are reviewed by the trial court. In cases where timeliness is critical and where objections are routinely filed, consider having the judge hear the case to expedite the process.

A record or set of stipulations is needed for the judge's review. Upon review the trial court may adopt the magistrate's decision, reject the decision, modify the decision, hear additional evidence, recommit the issue back to the Magistrate, or hear the matter.

## **XVIII. Community Resources and Services**

As mentioned, consultation with Justice System Partners (National Center for State Courts' Institute for Court Management Leadership Fundamental #2) is important. It is helpful to periodically review those relationships.

Maintaining a constructive relationship with Law Enforcement and the Prosecutor's Office is an important priority to help facilitate the efficient operation of the Court.

Where parents are concerned information regarding the effects on parents of an operating license suspension or restricted privileges should be discussed. Parents also need to be advised of the effects upon them of having a child on probation and the purpose of probation meetings. Parents are often unaware of the orders that can be issued against them, including assessments and the collection of costs.

Schools also need to know how the Court operates and the importance of the school's involvement. Probation officers should develop a relationship with the school that often will include meetings at school. Attendance issues and enforcement procedures should be addressed. The Court should also be aware of the Electronic/On-line school options as well as the special education needs and programs.

The Department of Job and Family Services (ODJFS)/Children's Services Board is also an important community partner. The need for specialized treatment placement, the costs thereof and the custodial arrangements for a child all involve working well with the ODJFS. Title IV-E is also an important concern that will often involve the ODJFS.

Title IV-E of the Social Security Act provides federal matching funds to help States pay for foster care placements for children who meet federal eligibility criteria. The federal share called "federal financial participation" (FFP) pays part of the cost of foster care maintenance payments made by the state for the support of eligible children living in foster family homes or child care institutions. FFP is based on each state's Medicaid matching rate and ranges from 50% to 83% of the foster care maintenance payments. In addition, the federal government pays 50% of the cost of administering the Title IV-E program (such as salaries of caseworkers and administrators, office space, etc.) and 75% of the training costs associated with the program. The benefits of Title IV-E (See *Faculty Resources* for memorandum from ODJFS, Office of Families and Children, Bureau of Fiscal Accountability) are for the Juvenile Courts, the County Commissioners and the Youth in the Juvenile Justice System. As of 2013, 41 of the 88 juvenile courts in Ohio have a sub-grant agreement with ODJFS, Office of Families and Children to take children into their care and placement responsibility and draw down Federal Title IV-E Reimbursement.

Mental health and substance abuse providers are important partners. The Court should consider the public versus private use of such programs, the costs and insurability through private insurance or Medicaid.

Finally, other entities, such as Victims and Crime Victim Advocacy Office and the Ohio Family and Children First Cabinet Council (known as "Ohio's Family and Children First Councils" (FCFCs)) are valuable partners that are directed to collect information on services and identify public and private funding sources for services provided to alleged or adjudicated unruly children (R.C. 121.37).

## **XIX. Grants and Subsidies**



Available Grants and Subsidies for funding and the costs of detention, treatment, and probation should be considered.

There are a number of Department of Youth Services (DYS) subsidies and grants, including for: Youth services allocations, RECLAIM allocations and subsidy grant funds, community corrections facilities, and community programs subsidies (such as targeted RECLAIM and Behavioral Health Juvenile Justice initiatives. Funding is often also subject to Federal requirements and may also be available through the Juvenile Justice and Delinquency Prevention Act.

**XX. Research on Contributing Factors to Consider Regarding the Juvenile Delinquent or Unruly Offender**

There are a number of Best Practices that use a validated, evidenced based risk assessment instrument. They include the Massachusetts Youth Screening Instrument (MYSI or MYSI-2), the Ohio Youth Assessment System (OYAS), and the Global Appraisal of Individual Needs (GAIN). These types of assessments are often used to determine DCM tracks.

When considering the assessment and role of circumstances that present risks the following should be considered: the trauma involved, substance abuse, mental health issues, family dynamics (e.g. presence of domestic violence, high conflict, siblings, etc.), and whether Abuse, Neglect and Dependency is an issue.

Educational disabilities and issues are also important considerations. The Individuals with Disabilities Education Act (IDEA), the Individual Education Plan (IEP), a 504 Plan, and/or a Behavior management plan may involve the Youth and should be considered. Emotional behavioral disorder (EBD) or similar evaluations may also be a consideration. A child's learning techniques can also be important.

There are also socio-economic factors affecting children and families (e.g., power of poverty). The Court should consider the curriculum on the ("Bridges Out of Poverty").

Research on the age and development of children should be considered. Understanding the basic principles of child and adolescent development is essential. Keeping abreast of recent developments in neuroscience and brain research and impacts on adolescent development has significant implications for juvenile decision-making, interactions with authority, use of detention, and effective accountability and treatment interventions.

Resiliency is another important factor. Family and genetics can play a role. Emotional, social and moral strengths can have an impact as well as school, community and religious beliefs.

Factors or considerations may include: disabilities and medical, psychiatric/psychological, behavioral health. Screening for disorders, including types and treatments (e.g., reactive attachment disorder, attention deficit disorders ADD/ADHD, co-occurring disorders, post-traumatic stress disorder "PTSD") is essential.

Educational and socio-economic are factors. The effects of domestic violence, even if child only witnesses abuse, can be relevant. Diversity (e.g., cultural and ethnic background, gender, race, socio-economic, sexual orientation) may also play a role.

There are differing approaches to delinquent and unruly behavior.

Risk and resiliency considerations by the Courts are often involved when evaluating placement, treatment, services, and educational needs.

Other considerations include: communicating with parents, families, victims; the constitutional and statutory rights involved; the best way to get timely and relevant information; the choice of evidenced based practices and other research supported programming; disproportionate minority representation; and, finally, the need for the judiciary to stay current on evolving risks, offenses and responses (e.g., increased problems with “sexting” and how some courts respond with the use of diversion programs).

## **XXI. Examining Judicial Philosophies and Practices as they Relate to Juvenile Offenders**

The Judge’s role is to determine issues of fact (beyond a reasonable doubt) and apply the law. Attention should be paid to the degree to which a judge can participate. Dealing with non-attorney parents can also be problematic. Remember that the required appointment of counsel or, if a conflict with the parents exists, the appointment of a Guardian Ad Litem, may be needed to protect the child’s interest.

Judicial Code of Conduct involves being impartial, keeping the peace, fairness when assessing the issues, integrity and independence– and the appearance and demeanor of the same (e.g. ex parte communications should be avoided).

The Judge should balance youth accountability and needs with protecting public interest and safety (R.C. 2151.01). It is important to have an individualized approach to judicial decision-making. Conflicting values and expectations will come into play. Weighing logical consequences and punishment will be required. Adolescent development requires that effective consequences be in close proximity to the behavior which is to be corrected (using a child’s sense of time).

Again, the ability to effectively communicate with children and parents, listen to their concerns, and understand the child’s development and age specific issues will be necessary. It’s important to develop a courtroom demeanor and control that facilitates this communication.

Staff training can go a long way to achieving these goals. A Staff that is courteous, knowledgeable and professional can have big impact on the perception of the public and court participants. Staff should also understand that the *Code of Judicial Conduct* applies to the staff as representatives of judge.

## **XXII. Main Category of Learning Statutory Definitions and Procedural Elements of Initial Filings of Citations and Appearances (Juvenile Traffic Offenders)**

Knowledge of relevant statutes, rules and case law is essential. A juvenile traffic offender is defined in R.C. 2152.02(N) and Juv.R. 2(W). Allowable dispositional orders for juvenile traffic offenders are governed by R.C. 2152.21.

A basic grasp of Ohio traffic law (Revised Code Title 45) includes: understanding the requirements for bicycles (R.C.4511.52) and mopeds (R.C. 4511.521); knowledge of a temporary instruction permit (R.C. 4507.05)–including the restrictions on an accompanying adult, the requirements for nighttime driving and the six month minimum (R.C. 4507.071).



The probationary license (R.C. 4507.07, 4507.071) includes driving curfews for holders of a probationary license who have held the license for less than twelve months (R.C. 4507.071(B)(1)(a)), a driving curfew for holders of a probationary driver's license who have held the license for twelve months or longer (R.C. 4507.071(B)(1)(b)) and passenger limitations for holders of a probationary license who have held the license for less than twelve months (R.C. 4507.071(B)(4)).

Ohio Traffic Rules include the juvenile court (Traf.R. 2(F) and 2(G)).

Procedurally, citations are filed pursuant to Juv.R. 10(A) using the Uniform Traffic Ticket form (Juv.R. 10(C), Traf.R. 3) and may be filed electronically (Traf.R. 3).

Proper consideration should also be made of the transfer to, or from, another county (Juv.R. 11).

A Juvenile traffic violations bureau is proscribed under Traf.R. 13.1. Procedures for out-of-state citations and diversion options should be established.

### **XXIII. Traffic - Initial Appearances to Adjudicatory Hearings**

The notice of hearing for the Initial Appearance can be by citation or separate notice. Often a separate notice procedure is established to allow the Clerk of Court to coordinate hearing times. Individual cases can also be consolidated for hearing.

The timeliness of hearing may matter. Operating a vehicle under the influence of alcohol or drugs (OVI), an Operator's license taken by officer and pre-adjudicatory orders may be factors to consider.

At hearing the Court should advise child and parent(s) of the rights and consequences (Juv.R. 29, the right to court-appointed counsel (R.C. 2151.352), the effect of a waiver (Juv.R. 3), and the financial responsibility and consequences.

The Court may accept an admission or no contest plea.

The Adjudicatory hearing has procedural concerns, including proper notice of hearing and the consideration of prehearing motions (Juv.R. 19 and 22(D)). As discussed, pro se parties having appropriate assistance, the role of parents and the issuance of subpoenas can be a concern.

The Adjudicatory hearing must be held on the Record.

The findings must be beyond a reasonable doubt or the complaint must be dismissed. A Judge may communicate the decision orally and explain ruling to child and parents/custodians. In the alternative the Judge may issue a written decision.

The Judge's role is to determine issues of fact. It is the Judge's responsibility to make a record. Judges should be familiar with the use of expert testimony, such as radar, alcohol testing, accident reconstruction and the effects of alcohol or drugs.

It is important for the Judge to know when judicial notice of a fact may or may not be taken (Evid.R. 201).

Courtroom management of the parties and counsel, including the role of pro se juveniles and parents is, again, important. Case flow management, time frames, time management, scheduling and continuances are essential in handling a traffic docket.

Knowledge of Rules of Evidence, including hearsay and opinion testimony is essential. Finding proof beyond a reasonable doubt also means having a knowledge of the elements of the charge and applying the findings accordingly. Research and writing skills for contested cases, such as an OVI or an accident with injuries, are important when writing decisions to satisfy the Court of Appeals.

#### **XXIV. Operating a Vehicle Impaired (OVI) cases**

In OVI cases attention should be paid to the need for an immediate or expedited hearing. License seizures, Administrative License Suspensions, the need for a pre-adjudicatory suspension or restrictions and the appointment of counsel may weigh in favor of an expedited hearing.

A motion to suppress evidence is a prehearing motion (Juv.R. 19 and 22(D)). Considerations of the motion will often require a familiarity with the knowledge of the reason to stop, the horizontal gaze nystagmus test, field sobriety test and the substantial compliance standard.

The implied consent law is also a consideration when a breath, urine or blood alcohol test has been refused, necessitating a license suspension and consideration of whether driving privileges can or should be permitted.

Blood, breath or urine alcohol testing means the Court should have a working knowledge of the instruments used and testing requirements, a knowledge of prohibited drugs, and a knowledge of the prohibited levels and test results (R.C. 4511.19(A)(1)(j)(i-x)). Consideration will necessarily have to be paid to the result of the test and the legal effect of, say, a finding of .02 v. .08 v. .17 blood alcohol level (R.C. 4511.19(A) v. R.C. 4511.19(B)).

Drugged Driving also requires a knowledge of the prohibited drugs and the prohibited levels and test results (R.C. 4511.19(A)(1)(j)(i-x)).

The Dispositional requirements for an OVI are outlined in R.C. 2152.21(A)(5)(a) and R.C. 2152.21(B). The Court should have a knowledge of the long-term consequences and the enhancements provisions for multiple OVIs.

BMV suspensions and requirements for violations of R.C. 4511.19 (R.C. 4510.31(A)(1)(b)) may also be imposed independent of the Court's disposition. The Court may want, but is not required to, keep the effect of those dispositions in mind when fashioning a disposition.

Texting while driving (R.C. 4511.204) may also include proof issues such as the need for a search warrant for cell phone where violation is suspected to have occurred if consent for the search cannot be obtained.

#### **XXV. Traffic - Disposition and Consequences**

Dispositions for juvenile traffic offenders is set forth in R.C. 2152.21. Marsy's law is applicable in juvenile traffic matters and the role of victim impact statements and a victim advocate is required when requested.

Fines range from \$50 to \$250 (R.C. 2152.20). Knowledge of the offense level for traffic citations is needed. The Court should establish a process for the collection of fines and costs.

At Disposition it's important to communicate consequences to both the child and parent(s). Parents should understand the consequences to be applied at home and enforcement of an operator's license restriction.

For Out-of-State Residents disposition may be waived in favor of the local juvenile court. If so, the BMV should be noticed of the disposition.

Operator's license suspension may include limited driving privileges, but attention should be paid to the mandatory license suspension period imposed by the BMV, such as for OVI matters. After the minimum suspension the Court can then grant limited driving privileges.

Driver's licenses can also be suspended for a finding of delinquency (R.C. 2152.19(A)(4)(1)) or unruly (R.C. 2151.354(A)(3)). There is also the possibility of a suspension for a school dropout (R.C. 4510.32).

Mandatory driver's license minimum suspension of 6 months up to maximum 5 years for certain offenses (ex: certain drug offenses) are possible and can even have a long term effect on a youth cited with no driver's license.

OVI penalties are set forth in (R.C. 2152.21(A)(5)(a) and R. C. 2152.21(B)).

Seat belt penalties are set forth in (R.C. 2152.21(C) and R.C. 4513.263).

There are also various collateral consequences that may result for the Court's disposition.

The BMV has a "Point" system for violations (R.C. 4510.036) including points and bicycles (R.C. 4511.52). The Court may order the BMV not to assess points to a license of a first-time offender upon successful completion of the CarTeens Programs available in each county.

The BMV imposes an operator's license suspension for multiple moving violations (R.C. 4510.31(A)). There is a ninety-day suspension for the second violation and a one year suspension for a third violation. Limited driving privileges can be granted by the Court (R.C. 4510.31(C)). There is also an Advanced Juvenile Driver Improvement program (R.C. 4510.31 and R.C. 4510.311) that may be taken by 2<sup>nd</sup> or 3<sup>rd</sup> offenders. Successful completion of the program means the BMV is not required to impose the applicable suspension, but the Court may still impose a suspension if it elects to do so.

The BMV may impose bicycle, moped, and pedestrian law suspensions (R.C. 4510.34).

Non-traditional juvenile traffic offender operator's license (O.L.) suspensions can be imposed in various circumstances, including: Delinquency disposition (R.C. 2152.19(A)(4)(1)); Unruly disposition (R.C. 2151.354(A)(3)); School dropout (R.C. 4510.32); as a mandatory suspension for drug abuse offense or violation of R.C. 2917.11(B) being drunk and disorderly (R.C. 4510.31, 2152.19(B)(2)) that requires a mandatory O.L. minimum suspension of 6 months

up to maximum 5 years; for carrying firearm to school (R.C. 2923.122 and R.C. 2152.19(B)(1)); for consuming alcohol in a motor vehicle (R.C. 4301.64) (O.L. suspension not less than 6 months to 1 year (R.C. 4301.99(A)); and consuming in car either as driver or passenger (R.C. 4301.69(E)) (O.L. suspension not less than 6 months to 1 year (R.C. 4301.99(C)).

Knowledge of BMV procedure and rules is important. The Law Enforcement Automated Data System (LEADS) (O.A.C. 4501:2-10) is a vital system available to the Court that requires familiarity with its reading and understanding its information. Access is restricted. LEADS is often compared to the Ohio Courts Network in terms of utility. It allows access to provide Report of citations/convictions to BMV, including necessary personal identification identifiers (PII). The information is used by BMV to provide notices to child and court and to assess points (R.C. 4511.52). LEADS allows access to BMV actions or citations regarding an individual. Its reports are certified documents as evidence. Reports may contain BMV suspensions/restrictions, multiple violations, financial responsibility law (R.C. 4509.01) violations, failure to appear violations (R.C. 4510.22(A)) and moped suspensions by the BMV (R.C. 4510.34). It will also contain information of driving privileges (when and for what purpose). If a reinstatement of a license is necessary it will set forth the fees and other requirements. Payment plans (R.C. 4510.10) have been established, then that information will also be available. The report will also contain Out-of-state convictions of Ohio drivers and Ohio convictions of out-of-state residents.

Sealing and expungement of records of juvenile traffic offenses is possible and the Court should have a working knowledge of these procedures. A child may file for the sealing of the record six months after the termination of the case and it may be granted if the child has been rehabilitated to a satisfactory degree and if certain conditions are met that do not preclude sealing the case. If sealed, the record will automatically be expunged after a period of 5 years or age 23, whichever is earlier.

## **XXVI. Traffic - Community Resources and Services: Roles and Relationship to the Courts**

As with other areas handled by the Court, the same community partners should be part of the process. Working with Law Enforcement and the Prosecutor's Office is important. Dealing with parents so they understand the effect of a suspension or restricted driving privileges, the effects upon insurance and the BMV financial responsibility suspensions for a vehicle owner and operator should be discussed when appropriate.

Where Schools are concerned a consideration of minimizing disruption to operations and the appropriateness of limited driving privileges considered.

A familiarity with the availability of Drivers' instruction schools in the area can be helpful in discussing alternatives with a Youth.

Driver's safety programs like Car Teens and the Juvenile Driver Intervention Programs can have a positive effect by providing additional driver education and avoiding mandatory suspensions and points assessments.

Finally, the Court is authorized to establish its own diversion program for first time traffic offenders. Those programs often necessarily involve the use of community resources and services to ensure the success of those programs.

## **XXVII. Competency - Juvenile Competency Proceedings**

The Revised code contains special statutes dealing with juvenile competency issues in delinquency proceedings (R.C. 2152.51 through R.C. 2152.59).

As in the adult system, competency refers to juvenile's ability to understand the nature and objectives of the proceedings against him/her and to assist in the juvenile's defense. A child is incompetent if, due to mental illness, intellectual disability, or developmental disability, or otherwise due to a lack of mental capacity, the child is presently incapable of understanding the nature and objective of the proceedings against the child or of assisting in the child's defense (R.C. 2152.51(A)(1)). The competency statutes apply to delinquency, but not unruly or traffic, proceedings (R.C. 2152.51(A)(2)). Competency is rebuttably presumed for a child fourteen or older. *Id.*

Ohio law authorizes a competency motion to be filed by any party or the juvenile court, sua sponte. Once a motion is made, the statutes present three initial alternatives. The court must adopt one of these alternatives within fifteen days (R.C. 2152.53(A)). These alternatives are set forth in Subdivisions (A), (B), and (C) of Sample Form #1 (refer to *Faculty Resources*). The first statutory alternative (A) is to find incompetency without any hearings whatsoever, based either upon the agreement of all concerned, or a prior determination of incompetency in another case. The second statutory alternative (B) is to find, without a hearing, either that no reasonable basis exists to order an evaluation (and dismissing the motion), or that such a reasonable basis does exist. In the latter instance, an evaluation is ordered. The third statutory alternative (C) is to conduct a preliminary hearing to determine whether a reasonable basis exists to order an evaluation. If the court chooses alternative (C), it must decide whether to order an evaluation within ten days after the preliminary hearing (R.C. 2152.53(B)). Sample Form #2 (refer to *Faculty Resources*) is used in the event the court chooses (C) above, i.e., to have a preliminary hearing to determine whether to order an evaluation. After the preliminary hearing, the court can either find no reasonable basis to order an evaluation (and dismiss the motion), or find such a basis does not exist and proceed to order an evaluation. Sample Form #3 (refer to *Faculty Resources*) is used if the court has found a reasonable basis to order an evaluation and has actually received all such ordered evaluations. At that point, the court must schedule a full competency hearing.

### **Competency - Pertinent Forms and Statutes**

Forms that address matters in R.C. 2152.51 and R.C. 2152.53 potentially get the court to the point where it actually considers the substance of the competency issue. By using these forms, the court can show any reviewing appellate court that it considered and followed all required steps in getting to, or avoiding entirely, the substance of the competency issue.

Juvenile courts are reminded that R.C. 2152.51(B) requires adoption of local rules to "expedite proceedings under sections R.C. 2152.51 to R.C. 2152.59 of the Revised Code." See *Faculty Resources* for a copy of suggested local rules, along with its adopting journal entry.

R.C. 2152.54 sets forth qualifications and standards for evaluators conducting court-ordered juvenile competency evaluations.

R.C. 2152.55 sets forth requirement pertaining to those participating in, or facilitating, a court-ordered evaluation, including the child, parents, custodians, and guardians. In addition, this section provides the evaluator with broad access to relevant private and public records, and requires

the prosecutor and defense counsel to deliver certain records in their possession to the evaluator within ten days of the evaluator's appointment.

R.C. 2152.56 sets forth the required subject matter content of a juvenile competency assessment report.

R.C. 2152.57 sets forth deadlines for issuance of the report, discusses use by the juvenile of an independently-obtained competency evaluation, discusses the allowable dissemination of the report, and bars the assessment of expenses related to a court-ordered evaluation to the child or his/her parent or guardians. It also provides for objections to the initial report, and the ordering of an additional report, deadlines and the assessment of costs for the same. The county must pay for the additional evaluation of the child is indigent.

R.C. 2152.58 requires the final competency hearing to be held "not less than fifteen nor more than thirty business days after" the court receives all ordered competency evaluations. This section also discusses the admissibility of the competency evaluation, court contact with the evaluator, consideration of additional evidence, and the court's observation of the child's courtroom conduct. The evidentiary standard is one of preponderance. The court must issue its written decision within fifteen days of the hearing, but may extend the time to thirty days by journal entry. This section bars a finding of incompetency solely upon the basis that the child has been voluntarily or involuntarily institutionalized under R.C. Chapters 5122 or 5123, or upon the child's taking of psychotropic medication.

R.C. 2152.59(A) bars statements made by the child in a competency evaluation or hearing from use against the child in later juvenile or adult proceedings adjudicating responsibility or guilt.

An adjudication of incompetency and unrestorability/nonattainability within set maximum time frames requires dismissal of the delinquency charges without prejudice (R.C. 2152.59(B)). But the court may delay dismissal for up to ninety days while making a children services referral.

R.C. 2152.59(C) through (F) discusses competency attainment services and the maximum time limits for such services. Subdivision (H) deals with further orders after receipt of competency attainment reports, depending upon whether the juvenile has attained competency. Depending on the outcome of competency attainment services, options include ordering changes in treatment settings or services, ordering dismissal without prejudice, or proceeding with the delinquency case. Adjudications of incompetency under these statutes do not bar civil actions based upon acts underlying the delinquency complaint.

# Administrative Duties





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## **Budget and Fiscal Management**

### **Educational Content:**

#### **I. Basic Fiscal and Accounting Procedures**

- A. Familiarity with court fiscal matters: what bank is used, who has authority to sign payroll, expenses; if countersignature is required; cash management protections in place or needed.
- B. Local Auditor:  
Determine what is processed by your county Auditor and what is handled internally by the court finance department. Some courts have no financial staff and all is processed by the Auditor's office.
- C. State Auditor:  
Cash count by State Auditor can be requested by the incoming judge.
- C. County Budget Director:
  - 1. Develop a relationship with the county Budget Director.
  - 2. Almost all budgeting, cash and appropriations requests are channeled through their office making them a tremendous resource in understanding the local process and philosophy as well as the day to day functioning of your finances.
- D. Revenue types, Cash accounts for revenue generated by the Court (Special Project funds) in addition to General Fund appropriations.
  - 1. How they are accounted for differently and what the funds may be used for.
  - 2. General Fund appropriations expire while Special Project fund cash amounts roll over from year to year.
- E. The three phases of government accounting: Cash, Budget, Appropriations and how they interact with each other. E.g. a cash account may have appropriations but unless the cash is there behind them, they are meaningless.
  - 1. Cash is generated by General Fund, Grants and Subsidies, and Fines and Costs (special project funds).
  - 2. Budgets are submitted and approved by the Board of County Commissioners for all types of funding streams. An approved budget line item must exist to expend any funds.
- 3. Appropriations funds are usually appropriated within the budget but some line items accrue cash throughout the year. Cash accounts e.g. Grants, Subsidies, Fines and Costs accrue cash throughout the year to fund the budget. Although a line item may be budgeted for \$10,000.00 only the amount in the actual account as it accrues may be spent.
- F. Carryover:  
Each county may deal with this issue differently but in general it is prudent to have separate funds to account for court revenue by source. This allows unused funds to be carried over to the following fiscal year where applicable.
  - 1. General Fund. Budgeted amounts not expended will not be carried over into the following year and revert back to the County GF.
  - 2. Cash accounts. Funds generated by the court such as Special Project Funds and some Fines and Costs should be held in a separate fund under the control of the Court. This allows for funds to be carried over from year to year.

3. Subsidies and Grants. Many subsidies and grants allow a percentage of funds to be carried over from year to year but again.

## **II. Court Budgets**

- A. The basics
  1. How to read budgets
  2. Line items: what is a line item; how to establish a line item; line items to accept funds
- B. Developing your budget
  1. Demonstrate need, know your statistics, cases cleared, cases filed, cost of processing a case, understand your Supreme Court of Ohio monthly statistical report.
  2. Demonstrate fiscal responsibility of the past year, report revenues generated, costs savings efforts, grants received.
- C. Budget types and cycles
  1. County budget – annual
    - a. January 1 to December 31 generally; but by pay periods; Temporary budget (due by March 30) (County budgets)
    - b. In lieu of an annual budget, the commission may set an interim 90-day budget (typically the temporary budget is  $\frac{1}{4}$  of what the Court will be appropriated for the year; a full budget is passed before April 1)
    - c. Impact of 27-pay-period year
    - d. Two budget types
      - i. Annual operating fund
      - ii. Capital improvement budget
  2. State budget - biennial
    - a. In conjunction with each session of the General Assembly
    - b. July 1 to June 30
  3. Federal – Judge must have a understanding of the fluctuating federal budget that will affect court services and operations (federal money is typically passed through a state agency (e.g., Ohio Department of Youth Services) before it reaches the Courts; if there is less federal money to distribute then a state agency will get less money to distribute; while there may not be a direct relationship between Juvenile Courts and the federal budget, there is an indirect relationship.
- D. Monitoring to stay within budget; accounting for expenditures
  1. Periodic financial reports: by month, pay period, etc.
  2. Review expenditures, overtime, etc.
  3. Anticipate shortfalls; projections to meet budget.
  4. Cash Flow, monitor cash generated by the court throughout the year within the cash accounts against anticipated expenses.
  5. Appropriation transfers and increases: When to do what and why (a Court can ask for an increase in appropriations but sometimes a Court doesn't have to if it can find a surplus in another line item; it may be advantageous to transfer appropriations instead of always asking for an increase; however sometimes asking for an increase may be the better thing to do; need to explain the differences and discuss why a Court might want to do one or the other)

- E. Audits – plan for audits
  - 1. State Auditor
  - 2. Ohio Department of Youth Services
  - 3. Title IV-D: by Ohio Department of Job & Family Services, Child Support Enforcement Agency (CSEA)
  - 4. Title IV-E

### **III. Revenue Streams**

- A. General Considerations
  - 1. Identifying funding streams available to all (General Fund, Title IV-E; RECLAIM; Competitive RECLAIM; House Bill 153 (129th G.A.) special project funds; Targeted RECLAIM to some extent)
  - 2. Protect funding/encroachment by commissioners and other entities (major area of concern here is special project fees; commissioners have been for years trying to be able to control a Judge's authority to use special project fees)
  - 3. Understanding partnership opportunities regarding funding streams
- B. County Funding
  - 1. General Fund
    - a. Annual operating fund
    - b. Capital improvement budget
    - c. County special levies (e.g., Children services levies, school levies, sheriff department, etc.) effect on court budget
  - 2. County budget process
    - a. Budget commission (prosecutor, auditor, and treasurer)
    - b. Budget commission certifies available revenue in the general fund
    - c. County commission conducts budget hearings
  - 3. Making budget projections
    - a. Creating a budget for submission to county commissioners
    - b. Applicable criteria: 'reasonable and necessary'
    - c. Overestimating vs. underestimating – tactical considerations
  - 4. County commissioners
    - a. Building ongoing relationships
    - b. Establishing budget credibility with document backup (at budget hearings be able to justify what is being asked for; the best way to do this may be to show actual expenses for the year before or to show projected new costs for new or different positions/projects being requested for the year)
  - 5. Presenting the budget request to the county commissioners
    - a. Preparing for the budget hearing
    - b. Presentation skills; advocacy and persuasion
    - c. Creating a record (engage a stenographer if necessary)
  - 6. Mandamus
    - a. Supreme Court cases
    - b. Practical considerations; tips from counties with positive outcomes
    - c. Future relations with Funding Authority (a budget process is an annual process and while a Court may win the battle in one year, the next year the Funding Authority could reduce the budget even more severely; Courts need to understand how important the ongoing relationship is with its Funding Authority; many mandamus actions occur at the end of a Judge's

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## *Administrative Duties: Budget and Fiscal Management*

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term in office and can sometimes be seen as the “death penalty” to the Court’s relationship with its Funding Authority)

- C. State Department of Youth Services Funding (Competitive RECLAIM, RECLAIM, Targeted RECLAIM, and Behavioral Health Juvenile Justice Initiative)
    - 1. 501 and 502 subsidies for detention and treatment (funds may be exhausted)
    - 2. 510 subsidy for youth services
    - 3. 401 RECLAIM subsidy: operation, cycle and formula; formula changes; audit points, competitive RECLAIM.
    - 4. 403 Community Corrections Facilities (CCF) subsidy for Community Corrections Facilities
    - 5. Juvenile Justice Welfare Council (JJWC)/AmeriCorps
    - 6. ‘No supplanting’ rule—understand concept (grant funding cannot be used to fund a current General Fund position/cost while General Fund money can be used to supplant a grant position/cost)
  
  - D. Federal Funding (Note: research confirmed Title II and V grants; Title VI refers to a Limited English Proficiency (LEP) requirement for grant recipients which is covered in the Grant Maintenance section)
    - 1. OJJDP funds administered through the Governor’s Council for Juvenile Justice)
      - a. Juvenile Accountability Incentive Block Grant (JAIBG):  
<https://www.ncjrs.gov/pdffiles1/ojjdp/fs200109.pdf>
      - b. Title II Formula Grants (state and local delinquency prevention and intervention efforts and juvenile justice system improvement):  
<http://www.ojjdp.gov/programs/ProgSummary.asp?pi=16>
      - c. Title V Community Prevention Grant Program:  
<https://www.ncjrs.gov/pdffiles1/ojjdp/234161.pdf>
      - d. Work incentive grants
      - e. Edward Byrne Memorial Justice Assistance (JAG) Grant Program (34 U.S.C. § 10152: [www.bja.gov/funding](http://www.bja.gov/funding)  
To support a broad range of state and local government projects, including those designed to prevent and control crime and to improve the criminal justice system.
    - 2. Social Security
      - a. IV-D (child support): management of and audit points
        - i. Pros: Additional revenue; Can significantly increase amount of child support collected when able to devote and entire courtroom to only child support
        - ii. Cons: When a courtroom is devoted only to IV-D not only can that courtroom do nothing else but IV-D cases, but any employee who is paid from this grant can only work on IV-D cases; can be frustrating at times
      - b. IV-E (placement of children): management for audit points
        - i. Pros: Additional revenue
        - ii. Cons: Moment in Time study can be cumbersome to Probation Department; need to devote one full-time employee to managing IV-E program or pay an outside agency (i.e. Justice Benefits) to administer the grant due to the complexity of the program; have to decide whether the extra revenue gained is worth the cost of the program
      - c. Medicaid
    - 3. Other federal grants
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- E. Other revenue streams and/or sources of collaborative funding
  - 1. Ohio Supreme Court assistance (e.g., Technology Grant)
  - 2. Ohio Department of Alcohol and Drug Addiction Services (ODADAS)
  - 3. Local Mental Health Recovery and Services Board (MHRSB)
  - 4. Charitable donations (local foundations; Citizens Advisory Board (CAB))
  - 5. Federal food subsidy
  - 6. Family and Children First Council (FCFC)
  - 7. Local school districts
  - 8. Specialty grants; resources for grant opportunities
  
- F. Court generated revenues (fines, costs, and other charges):
  - 1. Same fees and costs as are allowed the clerk of the court of common pleas for similar services
  - 2. Additional court costs for state reparation fund: R.C. 2743.70
  - 3. Additional court for indigent defense support fund: R.C. 2949.091
  - 4. Special projects: R.C. 2303.201 and local rule
  - 5. Cost of community control: R.C. 2152.20 (E.g., probation, drug testing, electronic monitoring)
  - 6. Computerization of clerk's office and computerized legal research: R.C. 2151.541
  - 7. Cost of detention and residential care: R.C. 2152.20
  - 8. Liquor violations: R.C. Title 4303
  - 9. Traffic violations: R.C. Chapter 2152; R.C. 4511.01- R.C. 4511.78
  - 10. Child restraint violation: R.C. 4511.81
  - 11. DUI: R.C. 4511.19 (for 0-3 prior offenses)
  - 12. BMV reinstatement fees: R.C. 4511.191
  - 13. Fines and court costs: R.C. 2152.20
  - 14. (Processing fee; collection; process; indigency)
  - 15. Copy charge for public records (determining charge): R.C. 149.43 (Effective 3/20/2015)] Availability of public records for inspection and copying
  - 16. Public defender indigent fees: R.C. 120.08
  - 17. Work release for non-support; sheriff may set fee
  - 18. Allocation of revenue set by statute for some fines and costs; e.g., County Juvenile Indigent Drivers Alcohol Treatment Fund and County Juvenile Indigent Drivers Interlock and Alcohol Monitoring Fund (R.C. 4511.191(F)) and Drug Law Enforcement Fund (R.C. 5502.68)
  - 19. Priority of payment is a consideration
  - 20. Contracts with other counties
    - a. Providing detention or residential care for other counties
    - b. Other services
  
- G. Collection of all fines, cost, and other charges
  - 1. Internal collection process
  - 2. Use of collection agencies (may be difficult to use as there is some question about whether the Juvenile Court has authority to collect after a child turns 21 and/or the debt can then be the responsibility of the parent)
  - 3. Contempt proceedings
  - 4. Remember that Marcy's Law requires the Court to certify unpaid restitution orders to the County/Municipal Court once the child turns 21.

H. Grants

1. Grant basics
  - a. Awareness of available funds; finding grant opportunities
  - b. Types of grants
    - i. Grants for planning vs. for program development
    - ii. Public vs. private
  - c. Costs of pursuing grants; matching funds.
  - d. Costs/benefit balance in pursuing and maintaining grants (load on staff)
  - e. Potential competition with stakeholders or other courts for same grant
  - f. Use your county federal grants administrator for help and support (e.g., DUNS number and other federal requirements)
2. Decision as to what funds to pursue and not pursue (e.g., Responding to: “Judge, I’ve got a great idea!”)
3. Application and maintenance
  - a. Grant applications and requirements
    - i. Requires considerable time and skill
    - ii. Equal Employment Opportunity Plan (EEOP) may be required for federal grants
    - iii. Title VI of the Civil Rights Act: requirement for Limited English Proficiency (LEP) individuals
  - b. Awareness of grant cycles and formulas
  - c. Grant maintenance and required reporting
    - i. Requires considerable time and attention
    - ii. Tracking hours related to grant work
  - d. Fiscal considerations and accounting for grant funds
    - i. Separate budget line item to accept grant funds
    - ii. Audit potential
4. Sustaining programs after grant ends; consequences if grant program terminates
  - a. Loss to community
  - b. Termination of staff assigned to grant program

**IV. Expenditures**

- A. Understanding wage and benefit packages
    1. Wages are the largest expenditure of the court budget
    2. Issues: Overtime; comp time, vacation and sick time accrual and usage
    3. Process for salary increases
      - a. Structured classification and compensation plan; or other process
      - b. Consistency and fairness (withstand scrutiny of staff, other agencies and public)
    4. Cash payments upon termination of employment (explain that when an employee is removed from employment that vacation and sick time may be cashed out; this payment may initially come from the Court’s budget, but it should be replaced before the end of the year by the Funding Authority)
  - B. Contracts, such as for services (professional services; residential placements, etc.)
    1. Process
      - a. Bids: (Understand bid minimum threshold) see above as the funding authority may determine the minimum threshold before a project needs to go out to bid; non-favoritism
      - b. RFP (Requests for Proposals): Writing, managing the bidding process
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- c. Internal process: Certification of funds by auditor, review/approval by prosecutor
- 2. Compliance requirements
- 3. Reporting requirements
- 4. Protection against and management of non-compliance and default
- 5. Bonding
- 6. Employee vs. independent contractor (IRS criteria)

**V. Judicial Philosophy and Personal Development**

The following are beliefs or judicial philosophies for judges to examine their thinking

- 1. Judges should be responsible stewards of public funds.
- 2. Judges should be aware of community groups to effectively respond to community concerns.
- 3. Judges should examine access and fairness considerations when setting court fees.
- 4. Judges should determine the extent and nature of relationships with stakeholders.
- 5. Judges should possess competent presentation skills to effectively explain and advocate for adequate court appropriations

**Personnel Management – Employment Law**

**Educational Content:**

**I. Ohio Civil Service**

- A. Classified and unclassified civil service: R.C. 124.11
  - 1. Standard employees
    - a. The default is that juvenile court employees are statutorily at-will. R.C. 2151.13
    - b. In single-county training and rehabilitation facilities (created under R.C. 2151.65), the Judge appoints the Superintendent, who is unclassified/at-will. However, all other employees are appointed by the Superintendent and are in the classified service. R.C. 2151.70.
    - c. In detention facilities established under R.C. 2152.41, the Judge(s) appoint the Superintendent in a county facility, and the board of trustees appoint the Superintendent in a district facility—and that Superintendent is unclassified/at-will. The Superintendent appoints all employees of the facility, who are unclassified in county facilities and classified in district facilities. R.C. 2152.42.
    - d. Revised Code, local ordinance, or agreement of the judges can provide added protection to unclassified/at-will employees (e.g., consenting to union representation).
  - 2. Grant funded employees and status (e.g., hiring/firing via federal guidelines versus serving as at-will employees)
  - 3. Joint county shared employees and other unique employment situations (e.g., Community Corrections Facilities (CCF) handled by multiple counties)
- B. Role of Ohio Department of Administrative Services: R.C. Chapter 124
- C. State and/or local civil service boards; as may be applicable to court and judges

**II. Unions and Other Employee Groups** (rare—typically only by statute or judicial consent)

**III. Fair Labor Standards Act:** <http://www.dol.gov/whd/flsa/index.htm>

- A. Exempt and non-exempt employees; excepted individuals (elected officials, personal staff, policymaking employees); salary vs. hourly compensation methods
- B. Counting time; increments of time; docking pay
- C. Off-the-clock work (e.g., e-mail, smartphones) creating overtime exposure
- D. Compensable activity: Beginning and end of day (donning and doffing); field work; changeable work locations; travel, etc.
- E. Breaks – meal and comfort breaks
- F. Court closures / furloughs

- G. Vacation and sick time policies (exempt and non-exempt)
- H. Overtime; compensatory time; piece rate (court reporters)
- I. Doing two jobs with different rates of pay
- J. Independent contractors (e.g., interpreters, court reporters, nurses, psychologists, etc.) vs. employees; IRS criteria

**IV. Family Medical Leave Act:** <http://www.dol.gov/whd/fmla/>

- A. Covered employers, eligible employees, posting requirements, qualifying events, serious health conditions, leave requirements and types, military Family Medical Leave Act (FMLA), medical certification, notification, forms, documentation, record management, return to work, retaliation; coordination with sick leave policy, call offs, restrictions on employees on approved FMLA
- B. Administration in conjunction with Workers Compensation and Americans with Disabilities Act (ADA) (FMLA concurrent with Workers Compensation)
- C. Administration – training managers to identify and respond to FML issues.

**V. Americans with Disability Act (ADAAA-Americans with Disabilities Act Amendments Act of 2008):** [http://www.eeoc.gov/laws/statutes/adaaa\\_info.cfm](http://www.eeoc.gov/laws/statutes/adaaa_info.cfm)

- A. Broadened definition of disability
- B. Otherwise qualified to perform the essential function, with or without reasonable accommodation (in both hiring and employment)
- C. Resources for accommodation—employer prerogative to choose among various accommodations
- D. Leaves of absence in excess of FMLA as a reasonable accommodation
- E. “Regarded as disabled” as defined by ADA
- F. Defenses: undue hardship and direct threat
- G. Mental and psychological disorders vs. behavior (conduct vs. condition; e.g., chemical dependency)
- H. Administration – training managers to identify and respond to ADA issues
- I. Pre-hire medical examinations; fitness for duty examinations

**VI. Workers Compensation / Risk Management**

- A. Incident/Injury reporting process

- B. Use of vehicles: personal vehicle for work purposes; if using a personal vehicle, the court may require sufficient liability coverage use of county vehicle
- C. Cell phone, texting policies
- D. Coming and Going Rules – Working from Home

**VII. Equal Opportunity / Non-discriminatory Practice**

- A. Protected categories: Race, color, religion, sex, national origin, ethnicity, ancestry, age, disability, genetic information, (sexual orientation).
- B. Pregnancy Discrimination Act: <http://www.eeoc.gov/laws/types/pregnancy.cfm>
- C. Caretaker discrimination: <http://www.eeoc.gov/policy/docs/caregiver-best-practices.html>
- D. EEO-4 report: <http://www.eeoc.gov/employers/eeo4survey/e4instruct.cfm> County-wide report
- E. Consistent, non-discriminatory administration of personnel actions: Posting, hiring, promotion and advancement opportunities, training, discipline, etc.
- F. Retaliation and Retaliation by association (e.g., terminating employee because of fiancée's protected conduct)
- G. Disparate impact considerations
- H. Equal pay
- I. Ohio Civil Rights Commission/Equal Employment Opportunity Commission
- J. Harassment by third party (non-employee)
- K. Uniformed Services Employment and Reemployment Rights Act (USERRA) Information <http://www.dol.gov/vets/programs/userra/main.htm>

**VIII. Genetic Information Nondiscrimination Act (GINA)**

**IX. Hiring and/or Promotion Practices**

- A. Posting (or non-posting) practices; judge's hires and promotions—compliance with federal and state employment laws
- B. Screening practices: drug, psychological, personality, polygraph, and other tests; Ohio Bureau of Criminal Identification and Investigation (BCII) criminal records and fingerprinting;
  - 1. Sequence within the hiring process
  - 2. Disqualifying offenses for employees who provide out of home care
    - a. Out of home care: R.C. 2151.011
    - b. Disqualifying offenses: R.C. 109.572(A) (8)

c. Rehabilitation standards: OAC 5101:2-5-09

- C. Interview protocols
- D. Selection practices
  - 1. Selection for trusted positions (supervisors, managers, executive team)
  - 2. Documentation of selection process
- E. Specific documentation (primarily pertains to hiring): Anti-terrorism, I-9, social security waiver, acknowledgment of receipt of manual (National Labor Relations Act caution on employee at will waivers) and other documents, drug screening, polygraph; IRS, Social Security waiver, W2, emergency contact forms
- F. Required vs. recommended documents in employee file and practices (e.g., do you retain interview notes, if so, how)

**X. Employee Conduct**

- A. Setting and maintaining expectations; expected work habits
  - 1. Position descriptions: essential functions; objective qualifications, FLSA classifications, intangibles
  - 2. Performance evaluations (exempt and non-exempt staff, salaried vs. hourly compensation)
  - 3. Employee and supervisor training
- B. Policy and practice
  - 1. Development and maintenance of employment policies, handbook, or manuals
  - 2. Critical provisions, scheduled reviews, frequent and comprehensive training
  - 3. Leave without pay policies/leave donation policies (optional)
  - 4. Consistent administration and enforcement

**XI. Employee Misconduct**

- A. Classified and unclassified; exempt and non-exempt; salary vs. hourly compensation reductions
- B. Investigation and evaluation
- C. Levels of action/discipline
- D. Consistent response to misconduct; documentation
- E. Pre-disciplinary conferences
- F. Service and administration of discipline
- G. Suspension and termination
- H. Risk management: when to notify insurance carrier, county official, risk manager, prosecutor of employment issues. E.g., accident in county car, sexual harassment, assault on/between employees, etc.

- I. Protected Concerted Activity – National Labor Relations Act (NLRA) 29 U.S.C. §§ 151-169; Use of Social Media

**XII. Conducting Workplace Investigations**

- A. Triggers and duties
- B. Choosing an investigator—internal or external
- C. Interviews (caution on advising employees not to discuss NLRA)
- D. Documentation
- E. Findings and responsive actions

**XIII. Constitutional Considerations/Protections for Employees**

- A. 1st Amendment – political affiliation/speech; freedom to speak on matters of public concern; freedom of religion; freedom of association. Exceptions for confidential, policymaking, and political employees. Social media
- B. 4th Amendment – right to be free from unreasonable searches (e.g., office/computer /e-mail searches, drug tests)
- C. 5th Amendment – right against self-incrimination (Garrrity rights)
- D. 5th and 14th Amendments – right to due process (e.g., pre-disciplinary and name-clearing hearings; harassment and discrimination)

**XIV. Personnel Files**

- A. Contents, access, etc.
- B. Record management and retention: Rules of Superintendence 26 and 26.01
- C. HIPPA issues—records

**XV. Judicial Philosophy and Personal Development**

- A. Judges should examine the values that they project regarding employee treatment, and in their actions, should exemplify expected standards for employee conduct and professionalism
  - 1. Fair and respectful treatment
  - 2. Recognition is important
  - 3. Reasonable accessibility regarding employee issues and concerns
  - 4. Employees are a highly valued asset
  - 5. Regular feedback on job performance (good and bad)

- B. Judges should examine the values they project regarding children and families and communicate those values to guide employees in their work (e.g., children are deserving of care, love, support and education balanced with accountability)
- C. Judges should examine the values they project regarding treatment of litigants and the public. Communicate those values to employees to guide their work
  - 1. Every case is important to the parties and should be treated accordingly
  - 2. All must be treated with fairness, dignity, and respect
  - 3. What is routine and familiar to the Court staff is strange and unfamiliar to the typical litigant. Staff can help to control risk and violence by being proactive vs. reactive.
- D. Judges are accountable to the public for efficient and effective court operation

**Personnel Management – Employee Relations**

**Educational Content:**

**I. Organizational Structure**

- A. Class and compensation plans
  - 1. Job descriptions and modifying job descriptions
  - 2. Classifying Fair Labor Standards Act (FLSA) and reclassifying positions when qualifications, hours, compensation change
  - 3. Position elimination, lay-offs, and reductions in force
  - 4. Are court or county policies applicable? (i.e., it may vary by jurisdiction)
- B. Conducting a human resources audit –process to assess compliance with human resources policy and law
- C. Risk management
  - 1. When to notify insurer, county official, risk manager, prosecutor of event
  - 2. E.g., employment issue, accident in county car, sexual harassment, assault on/between employees, etc.
- D. Benefits packages (may or must follow county policy)—need to be familiar with policies and worth of benefits packages (e.g., including insurance, IRS and ERISA regulations, leave time, etc.)

**II. Specific Positions**

- A. Court Administrator
  - 1. Role and job description; supervision of the court administrator
  - 2. Bifurcated leadership: (a) Administration of justice—Judge’s priority to have an efficient docket; and (b) Administrative duties of the court – Court Administrator’s responsibility to manage court and court operations
  - 3. Inventory of court property and equipment
  - 4. Ways to effectively use Court Administrator to improve overall efficiency of the court system and further the mission of the court through current knowledge and management of the following and more
    - a. Daily court operations
    - b. Personnel management
    - c. Budgets
    - d. Caseflow
    - e. Juries
    - f. Ability to partner and collaborate with agencies
    - g. Information regarding information technology, security, legislative updates, knowledge of community resources, etc.
  - 5. Continuing education to develop court administrator through local, state (e.g., Supreme Court of Ohio Court Management Program, developed by the National Center for State Courts) and national providers (e.g., National Juvenile Court Services Association [www.njcsa.org](http://www.njcsa.org))



- B. Magistrates: Sup.R. 19
  - 1. State mandates
  - 2. Review of magistrates decisions: Juv.R. 40
  - 3. Relationship with magistrates
- C. Chief Probation Officer duties: R.C. 2151.14
- D. Clerk: R.C. 2151.12
- E. Other Court and Non-Court Employees (e.g., detention staff, CASAs, GALs, mediators, other professionals)—refer to Operational Management Education Design (VI)—NOTE: again, specific positions vary county to county
- F. Orientation and continuing education

### **III. Relationship and Communication Skills**

- A. Managing individual employees: personalities, strengths, weaknesses
- B. Working with, organizing and motivating court staff;
  - 1. Recognizing employee effort
  - 2. Promoting morale
  - 3. Strength-based culture when working with staff
- C. Communication and accessibility
  - 1. Open door vs. chain of command. This decision can be affected by the size of the Court.
  - 2. Maintaining a presence with staff
  - 3. Responses to employee issues

### **IV. Workplace Environment and Culture**

- A. Respectful, positive, professional, and ethical (Code of Judicial Conduct)
- B. Inclusive
  - 1. Race, gender, disabilities, age, etc.; protected classes
  - 2. Equal opportunity for training and development; advancement paths
- C. Safe workplace considerations (determine perimeter of control; for example, are there safety considerations that extend to court parking lot and surrounding areas? How about field visits for probation officers?)
- D. Stress management (refer to Judicial Conduct-Judicial Wellness curriculum design)

### **V. Education, Skill Training and Staff Development**

- A. Orientation
- B. Coaching and developing staff
- C. Succession planning (Operational Mgt, I, sec E)

- D. Ethical issues for court staff
- E. Manager education and training

**VI. Judicial Philosophy and Personal Development**

- A. Judges should examine their personal values as it pertains to employee treatment and the actions of the judge should exemplify expected standards for employee conduct and professionalism; for example
  - 1. Fair and respectful treatment
  - 2. Recognition is important
  - 3. Reasonable accessibility regarding employee issues and concerns
  - 4. Employees are a highly valued asset
- B. Judges should examine the values they project regarding children and families and communicate those values to guide employees in their work (e.g., children are deserving of care, love, support and education balanced with accountability)
- C. Judges should examine the values they project regarding treatment of litigants and the public. Communicate those values to employees to guide their work; for example,
  - 1. Every case is important to the parties and should be treated accordingly
  - 2. All must be treated with fairness, dignity, and respect
- D. Judges and each member of the court staff are accountable to the public for efficient and effective court operation

## **Operational Management**

### **Educational Content:**

#### **I. Statutory and Administrative Requirements of a Juvenile Judge**

- A. Express vs. implied powers
  - 1. Express
    - a. Ohio Const. Art. IV
    - b. R.C. Chapters 2151 and 2152
    - c. R.C. Titles 23 and 27
    - d. Rules of Superintendence
  - 2. Implied
  - 3. Separation of powers with other officials
  - 4. Designation of the administrative judge (Sup.R. 4)
- B. Bonding requirements
  - 1. For all judges in their role as clerk (R.C. 2151.12(B)) – good practice suggestion from Montgomery Jonson LLP employment law attorneys: While the Administrative Judge (AJ) may be the judge primarily serving as Clerk in a multi-judge court, bonding all of the judges is recommended. This is because, in the event of the AJ's illness/ vacation/other lack of availability, the other judge(s) may be called upon to perform clerk duties.
  - 2. Superintendent of detention (R.C. 2152.42)
  - 3. Superintendent of community residential center (R.C. 2151.70)
  - 4. Judge may require other employees to be bonded (R.C. 2151.13 is discretionary)
- C. Oaths
  - 1. Oath of deputy clerks, magistrates, probation officers, detention director, hearing officers, court administrator, fiscal officer, and others (GAL)
  - 2. Employees upon hire
    - a. Only those appointees of a juvenile judge who exercise some degree of the juvenile judge's or court's constitutional or statutory authority would have to take an oath, per relevant statutes
    - b. Should a judge prefer to administer an oath for all new employees, benefits include underscoring the unique environment of working in the judicial branch different than other institutions, public and private
  - 3. Oath requirements for judge: see R.C 2701.06, R.C. 3.22, R.C. 3.23, Ohio Const. Art. XV, Sec. 7
- D. Managing exposure to risk and litigation
  - 1. Court Administrator/Human Resources professional on staff
  - 2. County prosecutor; 'in-house' options
  - 3. Employment law attorneys from Montgomery, Rennie, & Jonson provide legal consultation to Ohio judges paid through a contract with the Supreme Court of
    - a. Access to services via [judicialhotline@mrjlaw.com](mailto:judicialhotline@mrjlaw.com); (513) 241-4722/(216) 221-4722
    - b. Services include, but not limited to:

- i. Preventive/pre-litigation advice about any aspect of employment law or personnel issues—hiring, firing, discipline, FMLA, ADA requests, wage and hour, civil rights issues.
    - ii. Counsel for courts on civil rights issues outside the employment context (e.g., juvenile detention center issues)
    - iii. Courts call with questions about responding to requests for court records
    - iv. Each individual judge has a cache of time they can use to seek advice on individual ethics matters
    - v. Clearinghouse of information collected over the years for each division of court—template handbooks, personnel reviews, job descriptions, etc. Montgomery, Rennie & Jonson can send courts forms to get them started in creating personnel documents or revising their existing ones
  - 4. Ohio Attorney General inquiries
  - 5. Other practices or tips to minimize risk (e.g., the “At-Will” Doctrine – having all employees/staff sign understanding and acknowledgement before actual new hire and oath)
- E. Planning
  - 1. Budget projection and planning
  - 2. Long-term strategic planning; environmental trends
  - 3. Staffing needs
  - 4. Succession planning for key staff; advancement paths
  - 5. Reductions in force, lay-offs, exposure to unemployment insurance costs

## **II. Judicial Leadership in Administration**

- A. Bifurcated leadership:
  - 1. Administration of justice—Judge’s priority to have an efficient docket; and
  - 2. Administrative duties of the court—overseeing responsibility to manage court and court operations
- B. Judge responsible but (for some courts), many administrative duties carried out by other court leaders than the judge  
Avoiding a situation where court is not as successful as it could be because one part or department works only on its own or only for its own success
- C. Shared duties for multi-judge courts—coordination and collegiality
- D. Other: delegating authority, managing priorities, decision-making, communication and presentation skills

## **III. Records Management**

- A. File inventory (Sup.R. 38)
  - 1. Annual: On or before October 1
  - 2. New Judge: within three months of taking office
- B. Record management and retention schedules (case files and administrative records)
  - 1. Court records (Sup.R. 26)

2. Retention of administrative records (Sup.R. 26.01)
3. Retention of case-related records (Sup.R. 26.03)
- C. Inspection and release of records
  1. Inspection of recorded proceedings (Sup.R. 11)
  2. Records regarding delinquent children (R.C. 2151.14)
  3. Records regarding abused, neglected or dependent children (R.C. 2151.141)
  4. Records regarding residential addresses of child-serving (R.C. 2151.142) Personnel
  5. Administrative records (Sup.R. 26.01)
    - a. Most applicant and employee information is entitled to public access
    - b. Redaction of confidential, medical, and privileged information
  6. Requests for public access to court records  
Montgomery, Rennie, Jonson recommendation is that court records are not bound exclusively by the Rules of Superintendence (which discusses public access to court records), not R.C. 149.43 (which governs public records).
    - a. Sup.R. 44-47
    - b. Supreme Court cases
    - c. Working with military recruiter regarding needed records
- D. Sealing and expungement of records (R.C. 2151.355- R.C. 2151.358)

#### **IV. Reporting Requirements and Audits**

- A. Reports
  1. Definition of Supreme Court reports
  2. Annual report (R.C. 2151.18) due no later than June
  3. Report to administrative judge of pending cases (Sup.R. 40)
  4. Administrative judge's report to Supreme Court of pending cases (Sup.R. 40)
  5. Monthly statistical reports to the Supreme Court (Sup.R. 37)
  6. Report to Bureau of Criminal Identification and Investigation (BCII) (R.C. 2152.71)
  7. Report to Bureau of Motor Vehicles (BMV) (R.C. 4510.03)
  8. Report to state public defender (R.C. 120.36(E))
  9. Other? Strike this line
- B. Audits
  1. State Auditor (related to Budget and Financial)
  2. Audit requirement for grant recipients, as applicable; for example, Office of Juvenile Justice and Delinquency Prevention (OJJDP) audit requirements (DYS)
  3. Recommended self-audit procedures regarding records and report management
  4. Requirements for recipients of federal Title IV-D and IV-E
  5. Employment practices audit—entails having an attorney who specializes in employment law review workplace policies, documentation, and practices—both formal and informal—to ensure the court is operating in compliance with all state and federal law, as well as whether it is implementing best preventive practices to avoid future claims
- C. Importance of good, ongoing interbranch communication and relations

#### **V. Transfer and Receipt of Cases Between Courts**

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- A. Other juvenile courts
- B. Domestic Relations divisions
- C. Probate Division (paternity/adoptions)
- D. Preparation and transmittal of record and exhibits to the Court of Appeals
- E. Receipt and transfer of cases from/to other states Interstate compact
- F. Communication and professional courtesy between judges when transfers occur  
Court may have/share Jurisdiction but is court appropriate venue/most convenient forum?

**VI. Transfer and Accounting of Funds**

- A. Know where following funds are transferred
  - 1. State Public Defender
  - 2. Court costs
  - 3. Fines
  - 4. Restitution to victim and victims' assistance and remedies available in other Courts
- B. Refer to Budget and Finance curriculum design for fuller information

**VII. Management of Supporting Professionals**

- A. Guardians ad Litem and Court Appointed Special Advocate (CASA)
  - 1. Requirement regarding Guardians ad Litem (Sup.R. 48)
  - 2. Court Appointments (Sup.R. 8)
  - 3. Local court rules
- B. Mediators
  - 1. Sup.R. 16; see also Sup.R. 8
  - 2. Model Standards of Practice for Family and Divorce Mediation (Sup.R. 16, Appendix F)
- C. Other appointed professionals; e.g., psychologists, competency evaluators, etc.;
  - 1. Appointment (Sup.R. 8) – Mandatory or Discretionary?
  - 2. Cost – Court/State or Party?
- D. Visiting Judges  
Make request to Supreme Court of Ohio for visiting judge appointments (Note to Faculty: Not a main teaching point, but, use of private judges in juvenile courts is an unresolved matter (see R.C. 2701.10(B) and *Huffman v. Huffman*, 10th District, Franklin No. 02 AP - 101, 2002-Ohio-6031
- E. Periodic review of appointee lists, as recommended or required - Court appointed counsel minimum requirements per Ohio Public Defender

- F. Refer to Personnel Management curriculum designs for fuller discussion on court personnel matters, for example
  - 1. Employment Law
    - a. Exempt vs. Non-Exempt Employees
    - b. The “At-Will” Doctrine
  - 2. Employee Relations

## **VIII. Media Relations and Public Access**

- A. Open Court
  - 1. Ohio Const. § 1.16 –The Constitution requires open access to the courts, subject to the party/parties’ overriding interest to avoid prejudice/preserve trade secrets or privacy, etc., but it’s not part of the Sunshine Law
  - 2. Ohio Juv.R. 27(A)(1) Public access to juvenile hearings
  - 3. Broadcasting and photographing of court procedures (Sup.R. 12) – the Sunshine Laws—R.C. 149.43/R.C. 149.011—does not apply to most courts or court proceedings
- B. Closure (Exclusion) Hearings
  - 1. R.C. 2151.35, procedure for hearings in juvenile court
  - 2. Ohio Juv.R. 27(A)(1) Public access to juvenile hearings
  - 3. Ohio Public Official Confidentiality (R.C. 102.03(B))
  - 4. *Dispatch v. Loudon* 91 Ohio St. 3d 61
  - 5. Sup.R. 45-57
- C. Judicial Considerations
  - 1. Disciplinary Rules (Code of Professional Responsibility)
    - a. Trial Publicity (Rule 3.6)
    - b. Confidentiality of Information (Rule 1.6)
    - c. Judicial Officials (Rule 8.2)
  - 2. Ohio Code of Judicial Conduct
    - a. Avoiding Abuse of the Prestige of Judicial Office (Rule 1.3)
    - b. External Influences on Judicial Conduct (Rule 2.4)
    - c. Judicial Statements on Pending and Impending Cases (Rule 2.10)
    - d. Supervisory Duties (Rule 2.12)
    - e. Judge shall not make any statement that could affect the outcome/impair the fairness of a matter pending or impending in any court (Rule 4.1(A)(6))
- D. Understanding media process and needs
- E. Special circumstances
  - 1. Responding to negative press or incident
  - 2. Management of high profile cases or situations
- F. Development of local rules relating to media and public access

## **IX. Court Process**

- A. Purposes of Courts (might consider developing this more and putting it at the front of the presentation with Express vs. Implied Powers to set the tone)

1. Ernie Friesen video: Purposes of Courts (materials through the National Center for State Courts)
  2. Discuss how children are impacted by litigation and the passage of time
- B. Case Management
1. Refer back to the Purposes of Courts discussion
  2. Stress that the court, not litigants or lawyers, should control the pace of litigation
  3. Discuss Ohio's trial rates: courts should focus on resolution and not trials since the actual trial rate is so low
- C. Fundamentals of Case Management
1. Judicial Leadership and Vision  
Do you have a vision and expectation of how cases should move through the system and do staff, justice partners, and litigants know of that vision?
  2. Consultation with justice system partners  
How do you communicate with your justice system partners (bar, treatment agencies, schools, staff, etc.)?
  3. Court Supervision  
Do you or the attorneys decide the pace of litigation?
  4. Standards and Goals  
Do you have case processing time standards and how do you measure success against those standards?
  5. Control Continuances
    - a. Do you have a local rule governing the practice of requesting and granting continuances? (see Sup.R. 41)
    - b. Continuance Conundrum and How to Multiply Your Workload slides – emphasize actual costs and non-monetary resources associated with continuances for court staff and justice system partners (see NCSC caseflow materials)
  6. Early Dispositions  
Tools for Case Resolution Short of Trial
    - a. Alternative Dispute Resolution
    - b. Diversion Programs
    - c. Specialized or dedicated dockets
    - d. Plea agreements/plea cutoff dates
    - e. Waiver of appearance and payment of fine/costs
  7. Information Systems
    - a. How do you use your case management system to provide data which will drive management decisions?
    - b. What reports do you routinely expect on the standards you have established (see 4(a)) above? Are the reports automated? Manually generated?
- D. Differentiated Case Management System (DCM) - practice of grouping cases together by level of attention needed
1. Why not treat all cases alike?
  2. Grouping like cases together to gain efficiencies when scheduling; promotes/increases predictability for staff and justice system partners
  3. Elements of DCM:
    - a. Early case screening based on predetermined criteria
    - b. Assignment of cases to unique processing tracks based on screening assessment
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- c. Differential court management procedures for each track
  - 4. Tracks
    - a. Expedited – proceed to disposition with little or no judicial oversight
    - b. Standard – cases with issues that require only modest amounts of judicial oversight
    - c. Complex – require the highest level of judicial oversight
  - 5. Examples
    - a. Official or unofficial
    - b. Diversion (R.C. 2152.021(F))
    - c. Specialized and designated dockets
      - i. Standards (Sup.R. 36, Appendix I)
      - ii. Example includes drug, behavioral health, sex offender, family violence/domestic violence, truancy
- E. Other Applicable Statutes and Rules
  - 1. Presiding judge and administrative judge rules (Sup.R. 3 and Sup.R. 4) – responsibilities in terms of case scheduling and judge assignments
  - 2. Case management plan (Sup.R. 5)  
Good plans should reflect elements of the above case management practices
  - 3. Filing of judgment entries (Sup.R. 7)
  - 4. Random, individual assignment of cases to judges (Sup.R. 36)
  - 5. Caseload statistical reporting forms (Sup.R. 37)  
Examples of report forms and data reports that can be generated using those forms
  - 6. Completion of physical case inventory (Sup.R. 38)
  - 7. Case processing time standards (Sup.R. 39)
  - 8. Rulings on motions (Sup.R. 40)
  - 9. Many civil and juvenile court rules are applicable – should cite to each in case specific curriculum when developed
- F. Courtroom Management
  - 1. Treatment of Exhibits (Sup.R. 26)  
Management of firearms, weapons, drugs, and other contraband
  - 2. Court reporters, transcripts, recording systems (R.C. 2301.18); (Sup.R. 11)
  - 3. Management of Special Circumstances
    - a. Example includes cases involving gang members; gang rivalry; young child witness; child victim and perpetrator; judicial bypass hearings; high visibility case; media involvement
    - b. Considerations
      - i. Access to courtroom
      - ii. Sufficient seating; managing seating
      - iii. Room set-up
      - iv. Victim issues
      - v. Scheduling
      - vi. Security
- G. Resources available include
  - 1. Case management assistance is available from the Case Management Section of the Supreme Court of Ohio (free of charge)
  - 2. Refer to National Association of State Courts COURTOOLS performance measurement tools for fuller information [CourTool # 1 to 5]

**X. Court Security (Sup.R. 9)**

- A. Required court security plan (Sup.R. Appendix C)
- B. Required emergency preparedness manual (Sup.R. Appendix C, Standard 2 and 3)
- C. Staff training for emergency event: fires, security, bomb threats, hostage taking, etc.
- D. Required continuity of operations manual (Sup.R. Appendix C, Standard 4)
- E. Communication with commissioners and sheriff re: security needs of courtrooms and building
- F. Building and/or courtroom security scanning equipment: annual health department certification as required; See R.C. Chapter 3748 and R.C. 3748.07 regarding security scanners that use x-rays. (Note: usually the company that maintains the unit assists with the health permit)
- G. Armed court security personnel training and firearm certification if applicable: Ohio Peace Officer Training Academy (OPOTA) and Supreme Court of Ohio Judicial College education for court personnel
- H. Other considerations include
  - 1. Management of weapons, firearms, drugs and other contraband (e.g., found or held as evidence)
  - 2. Management of high-risk/special circumstances
  - 3. Who is exempt from screening; access facility from other than main/public entrances?

**XI. Court Programming**

- A. Deciding on programming and dedicated dockets
  - 1. Program options such as:
    - a. Basic programs (e.g., community supervision programs, placement and treatment options)
    - b. Specialized dockets (e.g., drug, behavioral health, sex offender, family violence/domestic violence and truancy dockets)
    - c. Specialty programs or dispositional alternatives (e.g., Car teens, driving schools, teen courts, shoplifting programs, other diversion programs)
    - d. Creative programs—generated from discussions that start with “judge, I’ve got an idea” (e.g., horse, dog therapy)
  - 2. Developing criteria for selection such as: What is purpose of program? How will it positively impact the best interest of child? The family? Is it age appropriate? Is it evidence-based?
- B. Monitoring
- C. Evaluation
- D. Funding

- E. Other considerations

## **XII. Technology Considerations**

- A. Websites
  - 1. Developing, managing, updating
  - 2. Liability issues
- B. Use of technology in cases and court operations
- C. Public records issues and access
  - 1. Access to public records issues
  - 2. E-filing
  - 3. Management of electronic media and content (e.g., courtroom audio/video recordings)
  - 4. Protection orders
- D. Technology proficiency - phones, computers, other technology
- E. Ability to respond to requests for information; records from various sources/times
- F. Social media: Twitter, Facebook, etc. in and out of the courtroom
  - 1. Issues when Courts consider the following
    - Value in having their own Facebook page and Twitter feed.
      - a. Positives – Promote the activities of the Court in the community or with staff, increased availability of information to the public, the availability to provide accurate information to the media when a high profile case is being heard at the Court.
      - b. Concerns – The site must be maintained by a staff member daily or weekly at a minimum, Courts will need someone who is versed in the use of social media to manage it.
  - 2. Establishing a social media policy for staff. This policy should address a few different areas:
    - a. Employees should not disparage or discredit the Court, any employee of the Court, any community agency or client of the Court in a public forum.
    - b. Employees need to maintain ethical standards while using social media: Confidentiality of information, Abuse of position or title and other ethical issues that may arise.
    - c. At-will employees must understand that they represent the Court and the elected official while at the Court and away from the Court, while using social media
- G. Familiarity with Ohio Courts Network and other automated data systems [e.g., LEADS, Ohio Law Enforcement Gateway (OHLEG)]
- H. Standardization
  - 1. Areas ideal for standardization include
    - a. Business Processes,
    - b. Forms and Reports,
    - c. Data Codes,

- d. Timeframes
  - 2. Technology is the digitalization of business processes
  - 3. Underlying business processes must be sound (technology will not necessarily solve or improve poor business processes)
  - 4. Technology will be less effective in an environment of poor or inconsistent business practices; for example:
    - a. When moving from manual processes to computerized processes, ensure focus is on assessing future systems needs not just emphasis on digitizing current practice
    - b. Consider more focus placed on the ability of a digital system to provide courts/managers with information rather than on just storing information
  - 5. Use of same data codes, timeframes and processes from court to court within a county potentially ensures efficiency and saves money
- I. Contingency planning
- 1. Disaster Recovery—why it is important and how to do it
  - 2. Business Continuity
  - 3. “Evergreening” Planning—most applications/operating systems and software have a shelf life (e.g., laptops 3-5 years)
  - 4. Ransomware and viruses – firewalls and permissions
  - 5. Pandemics and other health related issues
- J. Funds for court technology needs
- 1. Working with Funding Authorities (Local, State, Federal), Information Technology (IT) Directors under other Public Officials (e.g., may need to work through Auditor if no internal IT office)  
Cooperation versus courts as a separate branch of government
  - 2. Potential sources of revenue
    - a. Funds to create for IT projects (i.e. Research, Clerk, Special Projects etc.) or purchase equipment (e.g., digital recordings, software)
    - b. Statutory authority and possible sources of funds
    - c. Court computerization, computerized legal research, or both (R.C. 2303.201, R.C. 2151.541)
      - i. Computerization of the clerk of court’s office (R.C. 2303.201, R.C. 2151.541)
      - ii. Special projects of the court, including, but not limited to acquisition or rehabilitation of additional facilities, acquisition of equipment, hiring and training of staff, community service programs, mediation or dispute resolution services, employment of magistrates, other related services (R.C. 2303.201(E))
      - iii. Ohio Courts have limited funding and often do not have the resources for information technology projects; following are potential sources
        - (1) Grants
          - The National Center for State Courts has information on grant funding:  
<http://www.ncsconline.org/WC/CourTopics/ResourceGuide.asp?topic=GrtSol>
          - Ohio Office of Criminal Justice Services Grants Information  
<http://www.ocjs.ohio.gov/funding.htm>

- Organizations with Grants, compiled by the State Library of Ohio  
<http://winslo.state.oh.us/services/reference/bibgrant.html>
    - The National Center for State Courts has compiled information on funding resources which may be helpful.  
[http://www.ncsconline.org/D\\_Comm/BudgetPage.htm](http://www.ncsconline.org/D_Comm/BudgetPage.htm)
  - (2) Various fees which can be charged by the court, clerk of courts, and other judicial entities include: R.C.133.05, 133.07, 147.05, 733.16, 1901.26, 1907.24, 1907.261, 2101.162, 2111.51, 2151.54, 2151.5411, 2153.081, 2301.031, 2301.21, 2303.20, 2323.261, 2951.021, 4505.09, 4735.16, 5301.4 Ohio Revised Code  
<http://codes.ohio.gov/orc/>
  - (3) Other possible sources:
    - Reclaim:  
<http://www.dys.ohio.gov/dysweb/ReclaimOhio.aspx>
    - Title IV D—useful description  
<http://www.co.logan.oh.us/csea/html/history.html> –contact local county CSEA
    - Title IV E
- 3. Contracts—identifying best practices
  - a. Application and development
  - b. Maintenance
  - c. Service level agreement (SLA)
    - i. Within local government and contracts with vendors
    - ii. Determining amount needed
    - iii. Documenting specific services to be rendered and purchased
  - d. Request for proposals and competitive bidding process
  - e. Memorandum of understanding (MOU), etc.)
- K. Service Level Management—what are the best practices to service people using technology
  - 1. Help desk
  - 2. Release management—a proactive approach and process by which application software is changed, tested and released (e.g., law change requires tracking of new data within 6 month period; how to change application to address this new functionality)
  - 3. Time frames and systems to address “bug fixes” (i.e., to whom and how to report problems, identifying expected timeframes by when problem is fixed)

### **XIII. Detention Operation and Management; Residential Facilities**

- A. Role, requirements, and considerations for residential detention facilities
    - 1. Executive role for county facilities
    - 2. Advisory role for joint detention centers
    - 3. Bonding for superintendent of detention facility (R.C. 2152.42) and community residential centers (R.C. 2151.70)
    - 4. Minimum standards set by Ohio Department of Youth Services (DYS) and required annual audits by DHS
    - 5. Best practices see American Correctional Association and other professional organizations with guiding standards
-

- B. Management considerations—balancing safety and security of residents and staff with civil rights requirements
  - 1. Safety and security of residents and staff includes but is not limited to the following:
    - a. Screening and risk assessment of residents
    - b. Use of force, isolation, restraints
    - c. Duration of detention/provision of recreation (outdoor, group)
    - d. Surveillance/searches
    - e. Prison Rape Elimination Act (PREA)
      - i. <http://nicic.gov/prea>
      - ii. <http://www.ojp.usdoj.gov/programs/prisonrapeelimination.htm>
    - f. Law enforcement interactions with residents
    - g. Mandatory child abuse reporting (R.C. 2151.421)
      - i. In-house incidents
      - ii. Disclosure of external incidents
    - h. Universal precautions by staff for bodily fluids, etc.
  - 2. Health and treatment services
    - a. Medical director/medical policies
    - b. Medical, dental, and hospital providers; nurses and nurse practitioners
    - c. Mental health providers
    - d. Emergency, urgent, and routine care
    - e. Selecting, delivering, maintaining and evaluating treatment services
  - 3. Educational services and requirements for incarcerated youth
    - a. Federal and state requirements: for example, Individuals with Disabilities Act (IDEA) and Ohio Department of Education (ODE) requirements and/or regulations
    - b. Service agreement with local board of education
    - c. Other
  - 4. Community work service
    - a. Must exclusively benefit non-profit or government entity
    - b. Nothing that could benefit for-profit entity (even in addition to non-profit/government entity)
  - 5. Food services
  - 6. Visitation
  - 7. Orientation, training curriculum and continuing education of detention and residential staff
- C. Community considerations and resources
  - 1. Working with Community Based Correctional Facilities (CBCF)/Community Correction Facilities (CCF) and advisory groups
  - 2. Residential placements: selection, monitoring, funding
  - 3. Other
- D. Other considerations
  - 1. Ensuring access and fairness (refer to Section XIX: Accessibility and Judicial Conduct: Access to Justice and Fairness curriculum design)
  - 2. Familiarity with the Juvenile Detention Alternatives Initiative (JDAI)  
[www.jdaihelpdesk.org](http://www.jdaihelpdesk.org)

#### **XIV. Monitoring and Implementing Legislation and Rules**

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- A. Utilize resources of Judicial Conference, Ohio Association of Juvenile Court Judges, Supreme Court of Ohio, Legislative Service Commission summaries, national resources such as National Council of Juvenile and Family Court Judges Association [www.ncjfcj.org](http://www.ncjfcj.org) to monitor and stay current with emerging changes

- B. Implementation changes based on law and rule changes

**XV. Development and Review of Local Rules**

- A. Identification of need for a local rule
- B. Rule that governs establishment of local rules (Sup.R. 5)
- C. Notice and publication
- D. Filing with the Supreme Court of Ohio
- E. Annual review of rules

**XVI. Judicial Ethics**

- A. Understanding of Rules of Superintendence and Canons
- B. Filing of case management reports by Judges (monthly and annual)
- C. Filing of financial disclosure
- D. Bi-annually CLE requirement
- E. Election-year Specific Requirements (i.e., candidates education, financial reporting)
- F. Other considerations
  - 1. Ex parte communications
  - 2. Dealing with pro se litigants, and
  - 3. Social media and policy for staff

**XVII. Accessibility**

- A. Indigent litigants
  - 1. Qualification of Indigency (OAC 120-1-03)
  - 2. Appointment of counsel (funding and type of case)
  - 3. Assistance without advising
- B. Self-represented litigants - assistance without advising
- C. Americans with Disabilities Act (ADA)/Americans with Disabilities Act Amendments Act of 2008 (ADAAA)
  - 1. Accessibility barriers: physical; audio, visual, other  
Cannot require or permit party, witness, juror, or other to pay for accessibility aids (e.g., sign language interpreter)

2. Education of court personnel on inclusive language (See resource of a sample “People First Language Style Guide”)
- D. Non-citizens: Immigration and Customs Enforcement (ICE) and deportation issues
- E. Language
  1. Legal requirements
    - a. Appointment of a Foreign Language Interpreter or Sign Language Interpreter (Sup.R. 88); and definitions (Sup.R. 80); certification, revocation and roster of interpreters (Sup.R. 81, 82, 86); code of conduct (Sup.R. 84); continuing education requirement (Sup.R. 85)
    - b. Preventing discrimination based on national origin (Civil Rights Act of 1964)
    - c. Appointment of interpreters for deaf, hard of hearing, and mentally disabled; and effective communication for deaf individuals in state and local courts (R.C. 2311.14 also see Title II of ADA, 42 U.S.C. §§ 12131- 12134; 28 C.F.R.35.160(b) (2) and Rehabilitation Act of 1973 (29 U.S.C. 794), Section 504)—provided at Court expense
    - d. Expert witness rules applied to interpreters (Rules of Evidence 604 and 702)
    - e. Costs and federal funding for promoting access to Limited English Proficiency (LEP) services (Federal Executive Order 13166); <http://www.lep.gov/>
  2. Identification of and access to interpretation and translation services, such as
    - a. Local, regional and national interpreters
    - b. Local, regional and national telephonic translation services
  3. Availability required at every point of contact—language access court policies and procedures required of states receiving federal financial assistance (Code of Federal Regulation and August 6, 2010 correspondence from the US Department of Justice, Civil Rights Division, Assistant Attorney General to every state’s Chief Justice and State Court Administrator)
- F. Religious accommodations

## **XVIII. Performance Assessment and Quality Improvement (Management by Information)**

- A. Purpose of conducting performance assessment—to determine
    1. How well is the Court conducting its business?
    2. How does the Court assess its performance?
    3. How does the Court measure its performance?
    4. How can the Court improve?
  - B. Basic concepts of performance assessment
    1. Performance standard: expected outcome(s)
    2. Performance indicators: qualitative and/or quantitative data that measure process and intermediate steps (data points and process points)
    3. Performance outcome measures: compliance with standards
  - C. Tools and standards to assess court performance
    1. Example: NCSC CourTools performance measurements
      - a. Access and fairness
      - b. Clearance rates
-



- c. Time to disposition
  - d. Age of active caseload
  - e. Trial date certainty
  - f. Reliability and integrity of case files
  - g. Collection of monetary penalties
  - h. Effective use of jurors
  - i. Court employee satisfaction
  - j. Cost per case
- D. Components of quality assurance
  - 1. Procedural compliance (policy and procedure)
  - 2. Performance analysis
  - 3. Inspection (status of operations)
- E. Measurement considerations
  - 1. Identifying measurement instruments
  - 2. Data collection methods
  - 3. Data quality assurance
    - a. Obtaining and testing for accurate and reliable data
    - b. Uniform definitional compliance
    - c. Comprehensive reporting
  - 4. Reporting results
    - a. Methods and means of displaying and delivering results for varied audiences (e.g., public, media, county commissioners, court personnel)
  - 5. Performance Improvement—use of data to improve court performance
    - a. “Plan–Do–Check–Act/Adjust” (PDCA) cycle
    - b. Baselines and benchmarking
    - c. Problem diagnosis based on accurate and reliable data
    - d. Operational and strategic planning

## **Judicial Writing**

### **Educational Content:**

#### **I. Determining the Scope of the Opinion**

- A. Judgment Entry, Findings of Fact and Conclusions of Law, or Opinion
  - 1. Judgment Entry – the official written statement determining the rights and obligations of the parties. (Civ. R. 58.)
  - 2. Findings of Fact and Conclusions of Law – a detailed written statement separately setting forth 1) all legally material facts, as have been determined by the court, and 2) the court’s legal conclusions. (Civ. R. 52.)
  - 3. Opinion – a judge’s written statement of the legally relevant facts, the applicable legal rules, the judge’s conclusion, and the reasoning that led to that conclusion. Generally not as detailed or formally structured as Findings of Fact and Conclusions of Law.
- B. The scope of an opinion is usually determined by the complexity of the facts and the nature of the legal issues.
- C. The scope of the opinion should be sufficient to fulfill the needs of its readers.
  - 1. Primary Readers
    - a. Parties (both represented and unrepresented)
    - b. Counsel
  - 2. Secondary Readers
    - a. Government agencies (CSEAs, JFS, CPS, Schools, etc.)
    - b. Other service providers (counselors, child care providers, etc.)
    - c. Reviewing court on appeal

#### **II. Preparing to Write the Opinion**

- A. Developing outlines
  - 1. Organize by each legal issue to be resolved by the court
  - 2. Reusable templates for specific types of actions
- B. Reviewing the materials
  - 1. Notes
  - 2. Exhibits
  - 3. Briefs and memoranda
  - 4. Transcript or recording

#### **III. Writing the Opinion**

- A. Structure
  - 1. Introduction
    - a. Identify the parties
    - b. Explain the relevant procedural and jurisdictional status
    - c. State the issues the court is deciding
  - 2. Facts
    - a. State the legally relevant facts that are stipulated
    - b. State any findings required by the applicable statute

- c. State any other facts that are necessary to explain the court's conclusion
    - d. If legally material facts are contested, state the court's factual finding, not just a recitation of the evidence. In appropriate instances, include an explanation for that determination:
      - i. Finding based on content of an Exhibit (include citation to the Exhibit)
      - ii. Witness credibility determination
      - iii. Burden of proof determination
      - iv. Quality of the evidence
  - 3. Law and analysis
    - a. State the issue
    - b. State the applicable legal rule
      - i. If it is unclear which legal rule applies, state the court's conclusion and explain why
      - ii. If the legal rule is unclear, state the court's conclusion as to what the rule is and explain why
      - iii. If the legal rule requires a multi-step analysis, state what each step requires
      - iv. If the legal rule requires the court to consider specific factors and/or to make specific factual findings, state what those factors and findings are
      - v. If relevant to the outcome, state the parties' relative evidentiary burdens
        - (1) Burden of production
        - (2) Burden of proof
  - 4. Apply the applicable legal rule to the factual findings
    - a. State the court's conclusion as to the issue
    - b. State the court's analysis in sufficient detail to enable the reader to understand why the court reached that conclusion
      - i. If the applicable rule requires a multi-step analysis, apply each step to the factual findings (e.g., when deciding whether to change an allocation of parental rights and responsibilities, analyze each step in R.C. 3109.04(E)(1)(a))
      - ii. If the applicable rule requires the Court to consider specific factors, explain the application of each factor in sufficient detail to demonstrate that the court has considered each factor (e.g., when deciding spousal support, include sufficient analysis of the factors in R.C. 3105.18(C)(1) to enable a reviewing court to determine whether the award was fair, equitable, and in accordance with the law)
  - 5. Disposition
    - a. State the ultimate outcome
    - b. State any instructions necessary to implement the opinion
- B. Readability
- 1. Page layout
    - a. Use sufficient white space
    - b. Use organizational signals (headings, numbers, etc.)
  - 2. Use effective topic sentences
  - 3. Use effective sentences
    - a. Prefer shorter sentences
    - b. Prefer active voice
-

- c. Prefer simple sentence structure (subject + verb + object)
- d. Use parallel structure, particularly in lists
- e. Avoid placing citations within the sentence
- f. Omit surplus or redundant words and phrases
- 4. Clarity
  - a. Use terms consistently
    - i. Use the same name to identify the same party throughout
    - ii. Use the same word to mean the same thing throughout
  - b. Prefer plain language
    - i. Use familiar words instead of legal jargon and unfamiliar terms
    - ii. Avoid archaic words (e.g., aforesaid, herein, hereafter)
    - iii. When the use of technical legal terms or unfamiliar words is necessary, define or explain them in plain language
- C. Be aware of and avoid words and phrases that may cause offense
  - 1. Prefer gender neutral pronouns unless referring to a specific person or a specific gender
  - 2. Prefer gender neutral nouns (e.g., firefighter instead of fireman)
  - 3. Avoid words or phrases that are obsolete and potentially offensive, particularly in reference to race, gender, ethnicity, and persons with disabilities
  - 4. Avoid words and phrases that carry a pejorative connotation
  - 5. Avoid words and phrases that depersonalize (e.g., prefer “person who uses a wheelchair” rather than “wheel-chair bound person”)
- D. Editing
  - 1. Spelling
  - 2. Grammar
  - 3. Citation form

# Other



[illegible]

[illegible]



## **Authorization for Emergency Medical Treatment**

### **Educational Content:**

#### **I. Purpose of Authorization for Emergency Medical Treatment**

The laws and rules governing the Courts of the State of Ohio provide for the protection of children in need of emergency medical treatment when parents, guardians, custodians or anyone else with standing to authorize such treatment is unwilling or unable to do so, or refuses to do so. Where appropriate, the Court may also order reimbursement for reasonable costs of the treatment.

#### **II. Authority**

- A. R.C. 2151.33 (A) Temporary care - emergency medical treatment -reimbursement.
  - 1. Certificate of one or more reputable practicing physicians,
  - 2. Court may summarily provide for emergency medical and surgical treatment
  - 3. Service of a citation upon the child's parents, guardian, or custodian.
  - 4. Nonresident of the county
- B. Juv.R 13. Temporary Disposition; Temporary Orders; Emergency Medical and Surgical Treatment
- C. Caselaw
  - 1. *In re: Clark* 185 N.E.2d 128 (Lucas County Common Pleas 1962)
  - 2. 1951 Ohio Op. Atty. Gen. No. 689
- D. Authorizing consent for abortion without notification of minor's parent, guardian, or custodian
  - 1. Two parallel statutes govern the process (R.C. 2151.85/Civil and R.C. 2919.121/Criminal); however, one commentator notes "it is unlikely that any treatment provider will provide services to a female who has not complied with the criminal statute." Giannelli & Yeomans, *Ohio Juvenile Law* (2017 Ed.),
  - 2. Parental Notification of Abortion, Section 49:1. Courts providing forms to minors for this process may, therefore, wish to use those applicable to R.C. 2919.121.
  - 3. The Supreme Court of Ohio has promulgated the forms necessary for both the civil and criminal statutory actions. See Sup.R. 23, 23.1, 24 & 25. Sup.R. 23.1 contains the forms applicable to the criminal statute.
  - 4. The applicant must be under 18, pregnant, unmarried, and unemancipated. "Emancipated" is defined in R.C. 2919.121(A) as follows: "[A] minor shall be considered 'emancipated' if the minor has married, entered the armed services of the United States, become employed and self-subsisting, or has otherwise become independent from the care and control of her parent, guardian, or custodian." See, also, R.C. 2151.85(I).
  - 5. Jurisdiction and venue lie in the juvenile court in (1) the county where the applicant has a residence or legal settlement or (2) any county bordering the same. See R.C. 2919.121(C)(1). No fees or costs may be assessed to the applicant

- at any stage of the proceedings. The juvenile court may not notify the applicant's parent/guardian/custodian that she is pregnant and is seeking an abortion.
6. A juvenile court deputy clerk must assist the applicant in completing the necessary forms in a private, confidential setting. Sup.R. 23(A). As a practical matter, a juvenile court should designate and train at least one deputy clerk to assist petitioners in this process. This is often an intensely private and difficult matter for petitioners, and having a deputy clerk who is knowledgeable with the forms and who can efficiently guide the petitioner through their completion and filing is of great benefit.
  7. The juvenile court must appoint a guardian ad litem, and must appoint counsel at no cost to the applicant where she is unrepresented. Absent conflict, one person may serve in both roles. Case law provides guidance on avoiding such a conflict. For example: "Generally, when an attorney is appointed as guardian ad litem, 'that attorney may also act as counsel for the child, absent a conflict of interest.' *In re Holt*, 10th Dist. Franklin No. 03AP-355, 2003-Ohio-5580, ¶ 20. In determining whether a conflict exists, courts should make a determination, on a case-by-case basis, whether the child actually needs independent counsel, taking into account the maturity of the child. *In re B.K.*, 12th Dist. Butler No. CA2010-12-324, 2011-Ohio-4470, ¶ 19. Such appointment may be necessary when the child has consistently and repeatedly expressed a strong desire that is inconsistent with the guardian ad litem's recommendations. *Id.* " *In re M.H.*, 12th Dist. Fayette No. CA2012-11-035, 2013-Ohio-1063. As a practical matter, a juvenile court should prepare a list of attorneys and guardians ad litem who are knowledgeable with these procedures and who may be prepared to serve on short notice, given the narrow time restrictions imposed by statute and rule.

### **III. Procedure and Other Considerations**

- A. Steps from request to Authorization for Emergency Medical Treatment, use of form, needed consent, data, to evaluation of request and decision to grant or deny
- B. Once consent is granted, all decisions on care fall to the health care professionals (Suggestion: avoid the trap of being asked to approve specific treatments, medications, etc., decisions that are outside of judicial expertise)
- C. Other considerations such as examining judicial philosophy about parental expectations and high profile cases

## **Consent to a Minor's Marriage**

### **Educational Content:**

#### **I. Salutory Requirements and Procedures**

- A. Ohio law allows males to enter marriage at age eighteen, and females at age sixteen. R.C. 3101.01(A). A minor seeking to marry must first obtain parental consent. Parental consent means the consent of one of the following:
  - 1. Both parents;
  - 2. A surviving parent;
  - 3. A parent who has been designated the residential parent/legal custodian by court order;
  - 4. A court-appointed guardian;
  - 5. Any person, child welfare organization, or public children services agency who has been awarded permanent custody of the minor.
- B. A parent's consent is unnecessary where:
  - 1. The parent resides in a foreign country; or
  - 2. The parent has neglected or abandoned the child for at least a year preceding the date the minor applies for a marriage license; or
  - 3. The parent has been adjudged incompetent; or
  - 4. The parent is an inmate of a state mental or correctional institution; or
  - 5. The parent has lost permanent custody of the child in a juvenile court proceeding; or
  - 6. The parent has lost custodial rights to the child in probate court by the appointment of a guardian of the person of the minor.
- C. R.C. 3101.01(A) and (B)
  - 1. If a minor who would ordinarily have to obtain parental consent to marry has no parent, guardian, or custodian whose consent is necessary, then the minor may petition the juvenile court to consent to the marriage. Juv.R. 42(A) and (B) govern this process. Where the minor alleges parental consent is unnecessary due to neglect or abandonment, the minor's application must contain the parents' names and addresses, if known, and the court must send notice of hearing to same. Otherwise, no notice is required. Juv.R. 42(B) and (F). The juvenile may cause an investigation to be made concerning the circumstances surrounding the applicants, and is ultimately charged with determining, after a hearing, whether granting the application would be in the best interest of the applicant.
  - 2. A separate procedure applies to situations involving the following facts:
    - a. The minor female is pregnant or has already given birth to a child; and
    - b. One or both of the applicants is under the minimum age allowed for marriage (meaning either that the female is under sixteen and/or the male is under eighteen – R.C. 3101.01(A); and
    - c. The parents/custodians/guardians whose consent is necessary do consent to the marriage.In such case, the court must order an investigation into the circumstances, set a hearing, and ultimately determine whether granting the application is

in the best interest of the applicants. Juv.R. 42(C)-(H).

- D. Once it enters judgment, the juvenile court must provide a certified copy of same to the probate court

## Judicial Bypass

### **Educational Content:**

#### **I. Judicial Bypass Procedure for Authorizing an Abortion for a Petitioning Minor Absent Parental Notification/Consent**

Authorizing consent for abortion without notification of minor's parent, guardian, or custodian

- A. Two parallel statutes govern the process (R.C. 2151.85/Civil and R.C. 2919.121/Criminal); however, one commentator notes "it is unlikely that any treatment provider will provide services to a female who has not complied with the criminal statute." Giannelli & Yeomans, *Ohio Juvenile Law* (2017 Ed.), Parental Notification of Abortion, Section 49:1. Courts providing forms to minors for this process may, therefore, wish to use those applicable to R.C. 2919.121.
- B. The Supreme Court of Ohio has promulgated the forms necessary for both the civil and criminal statutory actions. See Sup.R. 23, 23.1, 24 & 25. Sup.R. 23.1 contains the forms applicable to the criminal statute.
- C. The applicant must be under 18, pregnant, unmarried, and unemancipated. "Emancipated" is defined in R.C. 2919.121(A) as follows: "[A] minor shall be considered 'emancipated' if the minor has married, entered the armed services of the United States, become employed and self-subsisting, or has otherwise become independent from the care and control of her parent, guardian, or custodian." See, also, R.C. 2151.85(I).
- D. Jurisdiction and venue lie in the juvenile court in (1) the county where the applicant has a residence or legal settlement or (2) any county bordering the same. See R.C. 2919.121(C)(1). No fees or costs may be assessed to the applicant at any stage of the proceedings. The juvenile court may not notify the applicant's parent/guardian/custodian that she is pregnant and is seeking an abortion.
- E. A juvenile court deputy clerk must assist the applicant in completing the necessary forms in a private, confidential setting. Sup.R. 23(A). As a practical matter, a juvenile court should designate and train at least one deputy clerk to assist petitioners in this process. This is often an intensely private and difficult matter for petitioners, and having a deputy clerk who is knowledgeable with the forms and who can efficiently guide the petitioner through their completion and filing is of great benefit.
- F. The juvenile court must appoint a guardian ad litem, and must appoint counsel at no cost to the applicant where she is unrepresented. Absent conflict, one person may serve in both roles. Case law provides guidance on avoiding such a conflict. For example: "Generally, when an attorney is appointed as guardian ad litem, 'that attorney may also act as counsel for the child, absent a conflict of interest.' *In re Holt*, 10th Dist. Franklin No. 03AP-355, 2003-Ohio-5580, ¶20. In determining whether a conflict exists, courts should make a determination, on a case-by-case basis, whether the child actually needs independent counsel, taking into account the maturity of the child. *In re B.K.*, 12th Dist. Butler No. CA2010-12-324, 2011-Ohio-4470, ¶ 19. Such appointment may be necessary when the child has consistently and repeatedly

expressed a strong desire that is inconsistent with the guardian ad litem's recommendations. Id." *In re M.H.*, 12th Dist. Fayette No. CA2012-11-035, 2013-Ohio-1063. As a practical matter, a juvenile court should prepare a list of attorneys and guardians ad litem who are knowledgeable with these procedures and who may be prepared to serve on short notice, given the narrow time restrictions imposed by statute and rule.

## **II. Hearings, Proceedings, and Judgment**

- A. The hearing must be held promptly – ideally within twenty-four hours, but in no event later than five calendar days after the petition is filed.
- B. A juvenile judge, rather than a magistrate, must hear the case, thus avoiding the objections procedures under Juv.R. 40.
- C. The hearing shall be closed.
- D. The proceeding is non-adversarial, and the court's inquiry and method of analysis are controlled by statute (R.C. 2919.121(C)) and rule (Sup.R. 23.1). The standard of proof is "clear and convincing." It is important to note the two methods by which a juvenile applicant may secure an abortion via this process. First, the court may conclude that the juvenile herself is sufficiently mature and informed to give consent to the abortion, and thus authorize her to give such consent. Second, even if the court does not find cause to authorize the juvenile to give consent, the court may itself authorize the abortion if it is in the applicant's best interest to do so.
- E. The court must enter judgment promptly, and no later than twenty-four hours after the hearing.
- F. The court must provide the applicant and her attorney with a copy of the judgment, and if it denies the petition, the court must notify the applicant of specific appellate rights.
- G. In case of appeal, the juvenile court clerk must immediately notify the Court of Appeals and, within four calendar days of the notice of appeal, deliver a copy of the notice of appeal and the record to the Court of Appeals. If a written transcript cannot be timely prepared, the audio tape of the hearing may be forwarded instead.
- H. Court papers and records in these actions are not public records under R.C. 149.43.

## **III. Other Considerations**

- A. R.C. 2919.121(C)(4), limiting a minor to one such petition per pregnancy, was found unconstitutional in Cincinnati Women's Services v. Taft, 468 F.3d 361 (6th Cir., 2006).
- B. Abortion, without a doubt, remains a controversial issue in Ohio, as elsewhere. A juvenile judge must candidly assess his or her thoughts on abortion and determine whether he or she can fairly, impartially, and without bias, determine matters required by this process. A juvenile judge may consider seeking the appointment of

an assigned juvenile judge if necessary.

C. Examine judicial ability to remain objective

## **Protection Orders Against Minors:** **Juvenile Civil Protection/Domestic Violence Protection Orders**

### **Educational Content:**

#### **I. Protection Order Statutes, Process, and Procedures in Juvenile Court**

##### **A. Statutory Provisions**

1. There are two separate protection order laws that apply to juvenile respondents who are alleged to have engaged in certain violent behaviors against others.
  - a. R.C. 2151.34 allows the juvenile court to issue a civil protection order against a juvenile respondent for a broad range of violent behaviors — felonious assault, aggravated assault, assault, aggravated menacing, menacing by stalking, menacing, aggravated trespass, and sexually-oriented offenses — regardless of the type of relationship between the juvenile respondent and the person to be protected.
  - b. R.C. 3113.31 is the domestic violence statute that allows the juvenile court to issue a protection order against a juvenile respondent for defined acts of domestic violence, and where the juvenile respondent and the person to be protected are family or household members.
  - c. Neither statute requires criminal charges or an arrest as prerequisites to file of a petition for or issue of a protection order.
  - d. The hallmark of a juvenile court action for a civil protection order is that the alleged perpetrator of violence is a juvenile – i.e., someone under the age of eighteen. The age of the petitioner or person to be protected does not control where to file. If the alleged perpetrator of violence is eighteen or above, juvenile court is not the proper court in which to file the petition.

##### **B. What to file, and where to file it**

1. To seek relief from juvenile court by way of a protection order, the person to be protected by the order must be a resident of the county where the court is located. Again, the alleged perpetrator of violence (i.e., the respondent) must be a person under the age of eighteen.
2. Whether the request is for a juvenile civil protection order (R.C. 2151.34) or a juvenile domestic violence protection order (R.C. 3113.31), the forms promulgated by the Supreme Court of Ohio in its Rules of Superintendence for the Courts of Ohio must be used. (Sup.R. 10.05) Copies of these forms should be available in a juvenile court clerk's office, and may always be found on the Supreme Court of Ohio website. The forms provide guidance for completing and filing the petition. (Form 10.05-A) Current forms are attached for reference.
3. The action is commenced by filing a petition. (Form 10.05-B) The petition must be signed in the presence of a notary public or a juvenile court deputy clerk. There is no filing fee nor may costs be imposed on either petitioner or the juvenile respondent

##### **C. Who may file the petition**

1. The person to be protected may file the petition on his/her own behalf, even if a minor. Also, a parent or another adult family or household member may file on behalf of the person to be protected. Finally, the juvenile court may permit



another person to file on behalf of the person to be protected, even where there is no family/household relationship between the petitioner and the person to be protected. However, allowing such a filing is within the sound discretion of the court.

2. At all stages of court proceedings on the petition, the petitioner may be accompanied by a victim advocate — i.e., a person who provides support and assistance for a person who files for a protection order. A petitioner may wish to consult a victim assistance service offered through a prosecutor's office, service provider in the community, or elsewhere.
  3. Those seeking protection orders should consider retaining an attorney. Victim advocates may be able to refer petitioners to local attorneys who are willing to represent petitioners pro bono. The court does not appoint attorneys for petitioners in actions for civil protection orders, but may in its discretion appoint counsel for the juvenile respondent.
- The court may grant a continuance to allow a petitioner obtain counsel.

## **II. Types of Hearings and Other Requirements**

### **A. The ex parte hearing**

1. If the petitioner requests an ex parte hearing, the court will conduct such a hearing no later than the next court day after the petition is filed. The petitioner or person to be protected may be required to testify under oath or the notarized petition may serve as basis for the ex parte hearing. If there are grounds for an ex parte protection order — i.e., immediate and present danger to the person to be protected, the court will issue an ex parte protection order on the form adopted by the Supreme Court of Ohio. (Form 10.05-C) The ex parte order will contain temporary orders the court finds are necessary for the safety and protection of the victim. Any ex parte order is temporary, and a full hearing is required within ten court days after the ex parte hearing, unless otherwise continued by the court. All parties will be notified of the full hearing, including the juvenile respondent and his/her parent/guardian/legal custodian. A full hearing will be scheduled even if the court declines to issue an ex parte order.
2. The petitioner must supply an address for the juvenile respondent for purposes of service of the ex parte order and/or full hearing notice on him/her.
3. If an ex parte order is issued, the clerk must provide the petitioner with a certified copy of the order. This copy should be kept by the petitioner to be shown to law enforcement if further assistance is necessary. Also, the deputy clerk shall cause delivery of the order and other pertinent documents, e.g., petition (Form 10.05-B) and warning page (Form 10.05-F) to the county sheriff's office for personal service upon the juvenile respondent and his/her parent/guardian/legal custodian, in accordance to Civ.R. 65.1. The court must also complete a "Form 10-A" for entry of the order into the National Criminal Identification Center (NCIC) protection order file.

### **B. Full hearing**

1. The full hearing shall occur on the scheduled date, unless it is continued by the court. Continuances are at the court's discretion, and may be granted where the juvenile respondent has not been served with the petition and notice of the hearing, where the parties mutually consent to a continuance, where a continuance is necessary to allow a party to obtain legal counsel, or where the court decides a continuance is needed for other good cause.

2. At the full hearing, the petitioner, the juvenile respondent, and other witnesses as deemed necessary by the court shall have the opportunity to testify under oath. The burden of proof is upon the petitioner, who must meet the preponderance of the evidence standard. However, if the petitioner requests electronic monitoring of the juvenile respondent because the continued presence of the respondent poses a risk to the health, welfare or safety of the person to be protected, the burden of proof increases to a clear and convincing standard.
  3. At the full hearing (as well as at the ex parte hearing), the court will review all the types of relief requested by the petitioner in his/her petition, and will determine what relief is justified by the facts and law. The petition form (Form 10.05-B) contains a list of the types of relief that may be granted in a protection order proceeding. When completing the petition, the petitioner will indicate the types of relief requested, and will also have the opportunity to write in additional forms of relief.
  4. If the full hearing is conducted by a magistrate, the magistrate will grant or deny the full hearing protection order. Generally, the magistrate will grant a juvenile civil protection order (Form 10.05-D) if the juvenile respondent is not a family or household member of the party to be protected or a juvenile domestic violence civil protection order (Form 10.5-E) if the juvenile respondent and party to be protected are family or household members. The juvenile judge may adopt the magistrate's granting or denial of the full hearing protection order after reviewing the order and determining that there is no error of law or other defect evident on the face of the order.
  5. If a full hearing protection order, i.e., juvenile civil protection order (Form 10.05-D) or juvenile domestic violence civil protection order (Form 10.5-E), is issued, the clerk shall cause delivery of the order and other pertinent documents, e.g., warning page (Form 10.05-F), in accordance to Civ.R. 65.1. The court must also complete a "Form 10-A" for entry of the order into the National Criminal Identification Center (NCIC) protection order file.
- C. The duration of the order  
The court will set the termination date of a protection order, but in no event will the order last beyond the juvenile respondent's nineteenth birthday.
- D. Dismissals
1. If both parties fail to appear for a scheduled hearing, a notice of dismissal for failure to prosecute shall be sent to the parties. Within ten days of the court sending said notice, any party may request another hearing. If such a request is made, the court will schedule another hearing and notify the parties and any victim advocate.
  2. If only the juvenile respondent appears at the hearing, the court may receive the respondent's testimony and may dismiss the matter on that basis if warranted.
  3. If a petitioner desires to dismiss a petition before it is heard by the court, or if a petitioner desires the court to terminate an existing ex parte or full hearing protection order, the petitioner must file a written motion requesting the same.
  4. If matter is dismissed court must seal and expunge matter after appeals time runs (R.C. 2151.34(G)).
- E. Once a protection order is issued, the petitioner may not on his/her own waive or nullify by invitation or consent any requirement of the order. (Form 10.05-F)

Review completion and instruction of standardized forms.

Since Civ.R. 65.1 does not require magistrates to follow Civ.R. 53 as it applies to magistrate's granting or denying a civil protection order, the magistrates should indicate on the order the findings of facts that led the magistrate to conclude that the person to be protected by the order is being harmed or has been harmed by the juvenile respondent.

### **III. Other Considerations**

- A. Relevant history and dynamics of child and family
  - 1. Family dynamics, cultural issues, education, etc.
  - 2. Mental health, disabilities
  - 3. Substance abuse and other risk factors such as child abuse, family violence
- B. Understanding of teen dating violence dynamics
  - 1. Power and control issues unique to teens and teen dating violence
    - a. Physical abuse, e.g., hitting shoving, biting, strangling, kicking, etc.
    - b. Verbal or emotional abuse, e.g., threats, insults, humiliation, intimidation, stalking, isolation
    - c. Sexual abuse, e.g., coerced sexual activity, rape, restriction to access contraceptives
    - d. Digital abuse, e.g., use of social media networking to intimidate, harass, threaten, including excessive texting, cyber bullying, sexting
  - 2. Familiarity with risk and lethality factors
    - a. Exposure to family and community violence
    - b. Aggression towards peers
    - c. Prior use of aggression against another partner
    - d. Acceptability to use violence to yield a desire outcome
    - e. Acceptance of violence amongst peers
    - f. Low self-esteem
    - g. Mental health concerns, e.g., depression, deep sadness, hopelessness
    - h. Poor problem solving skills
    - i. Anger management issues
    - j. Poor at communicating feelings
    - k. Poor coping skills
    - l. Blaming others when things go wrong or not as desired
    - m. Use of alcohol and other drugs
    - n. Threats of suicide
- C. Collateral consequences of issuing a protection order
  - 1. Sealing vs. expungement of protection orders
    - a. A juvenile civil protection order and juvenile domestic violence civil protection order must be sealed upon the juvenile respondent's 19th birthday.
    - b. If a full hearing order is not granted, the court must automatically seal all records, including ex parte related records.
    - c. There is no clear authority regarding the expungement of these orders.
    - d. If the respondent has not complied with the terms of the order, the court may consider sealing the record two years after the termination of the order.

2. Inspection of sealed records is allowed pursuant to the instances detailed in R.C. 2151.358(D)
- D. Treatment options or offender intervention program for minors
- E. Working with community actors
1. Duty to involve or report to schools
  2. Duty to involve or report to children services
  3. Duty to involve or report to other justice partners

## Judicial Interviews

### **Educational Content:**

#### **I. Previous statutory law in effect until 1991:**

- A. 11+ year old children were interviewed at the request of either parent and were able to state their preference for legal custodian in original proceedings
- B. In any proceeding, 12+ year old children were able to elect the parent with whom s/he wanted to live, absent a showing by the other parent that the election was not in the child's best interest.
- C. Consequences:
  - 1. Children were being "prepared" to make an election by age 12
  - 2. Undue pressure by one parent
  - 3. Children were taken to attorneys to sign affidavits to make their elections upon reaching age 12.

#### **II. Current statutory law:**

- A. In its discretion, the court may interview a child as to his or her "wishes and concerns with respect to the allocation of parental rights and responsibilities for the care of the child and for the purposes of resolving any issues related to the making of that allocation." However, if either parent requests a judicial interview of the child, the court must do so. O.R.C. §3109.04(B) (2). See, for example, *Scassa v. Scassa*, Third Dist., 1998 WL 404209.
- B. No written or recorded statement/affidavit of the child's wishes/concerns is permitted. O.R.C. §3109.04(B) (3).
- C. If an interview takes place, the following apply:
  - 1. The court may first appoint a guardian *ad litem*. Upon the motion of either parent, the court **shall** appoint a guardian *ad litem*. *Badgett v. Badgett* (1997), 120 Ohio App. 3d 448.
  - 2. The court must first determine the child's "reasoning ability to express the child's wishes and concerns with respect to the allocation of parental rights and responsibilities for the care of the child" before continuing with the interview. See, for example, *In re Longwell*, Ninth Dist., 995 WL 520558, citing *State v. Frazier* (1991), 71 Ohio St. 3d 247.
  - 3. Even if the child has sufficient "reasoning ability," the court may find that it is not in the child's best interest for the court to determine his/her wishes/concerns. RC 3109.04 (B) (2).
  - 4. If in the best interests of the child, the court must proceed to make a determination.
  - 5. The interview is conducted in chambers with the child, the child's attorney, the judge, and necessary court personnel. RC 3109.04 (B). A court's permitting a child's guardian ad litem to be present is proper. *Butland v. Butland*, Tenth Dist., 1996 WL 362038.

6. Attorneys for parents may be permitted at judge's discretion. RC 3109.04 (B).
7. Some appellate districts do not require courts to interview children in cases involving the reallocation of parental rights and responsibilities when the evidence fails to establish that a "change in circumstances" has occurred since the most recent parenting decree. For example, *Rice v. Rice*, Fifth Dist., 2011-Ohio-3099.
8. Some appellate districts permit courts to seal the record of a child's interview. For example, *Beil v. Bridges*, Fifth Dist., 2000 WL 977221; contra, *Inscoc v. Inscoc*, Fourth Dist., (1990) 121 Ohio App. 3d 396.

### **III. Timing Considerations**

Ohio law does not require a judicial interview to occur at a particular time so each judicial officer is free to determine when an interview might occur. Consider the following timing issues:

- A. Interviews with older children soon after case begins may resolve disputes quickly
- B. Interviews just prior to a hearing allow a judicial officer to hear recent impressions
- C. Allow adequate time for the interview and, if there is more than one child, multiple interviews.
- D. Do not interview the child at the same time as the parents' or caretakers' hearing.
- E. If you have previously interviewed a child, review the notes prior to a second interview to become aware of any changes in the child's situation, wishes or concerns.
- F. Interviews after the hearing may allow for checking something discerned during the trial and/or explaining the decision
- G. Barring an emergency, the Guardian ad litem, child's attorney and/or CASA should be present
- H. If child is in school, try to set interview for after school hours.

### **IV. Making the Child Comfortable**

It is important the child is as comfortable as possible with the interview process.

- A. Younger children: Consider developing a special area or playroom.
- B. Children 11 or 12 and up are more comfortable sitting in an office setting.
- C. Some judicial officers prefer the courtroom and wear their robes; others prefer street clothes in order to make the child more comfortable.

### **V. Purpose of the Interview is to determine a child's wishes and concerns relative to the allocation of parental rights and responsibilities. Purpose is not a substitute for factual finding relevant to best interest. Within that scope, a judicial officer could:**

- A. Determine a child's perception of both parents, other caretakers, and siblings.
- B. Ascertain a child's likes/dislikes concerning the home settings.
- C. Discern what a child does with each parent or other caretaker.
- D. Discover which parent or other caretaker assists the child with school/activities.
- E. See and hear the reactions and answers to questions.
- F. Allow the child to feel s/he has input in the decision.
- G. Explain the court's decision.

**VI. Statutory authorization for other types of judicial officers' interviews of children.**

- A. In third-party companionship or visitation rights cases. [R.C. § 3109.051 (C)]
- B. In permanent custody cases to determine "the wishes of the child" [R.C. § 2151.414 (D) (2)]

**VII. Effective interviewing of children:**

- A. See Karen J. Saywitz, *The Art of Interviewing Young Children in Custody Disputes*, vol. 30, no. 4 Family Advocate 26 (Spring 2008):
  - 1. Establish rapport and trust
  - 2. Address anxieties; dispel fears
  - 3. Establish ground rules
  - 4. Prepare age-appropriate explanations
  - 5. Match questions to a child's capacity
  - 6. Create an inviting environment
  - 7. Demonstrate a willingness to listen
  - 8. Do not pressure
  - 9. Use open-ended, non-leading questions
- B. See Anne Graffam Walker, Julie Kenniston, and Sally S. Inada, *Handbook on Questioning Children: A Linguistic Perspective*, American Bar Association Center on Children and the Law, 2013.

**VIII. Suggestions for conducting interviews of children:**

- A. Develop a "script" to use:
  - 1. Have your introduction down pat – make sure the child understands what you do, why you are conducting the interview, and the extent you will share what is said in the interview.
  - 2. Follow your script to avoid missing an important topic, to cover those things you believe are important and to allow you ease in interpreting any notes you may have,
  - 3. Introduce yourself. Explain the purpose of the interview. Assure the child that he/she is not at court to *choose* between adults and that it is your job to make that

decision, after hearing from many people about what is best for the child.

Explain that the interview is being recorded and the purpose for the recording.

4. Utilize open-ended questions that explore the child's relationship with the adults and other children in each home.

**B. Possible Items to Use during an Interview**

1. Paper and markers, crayons, colored pencils – with younger children ask them to draw their family or, as an alternative, ask them to draw a castle and the people they would like to have live in it with them
2. Use Items that will not distract child from conversation
  - a. Puppets
  - b. Games
  - c. Books
  - d. Blocks
  - e. Lincoln Logs
  - f. Dolls or stuffed animals
  - g. Doll house
  - h. Puzzles

**IX. Research on Child Interviews**

- A. Many judicial officers suggest that interviewing children may be harmful to children but research conducted in Ohio, Ontario, and Quebec Research by Nick Bala, Rachel Birnbaum, and Francine Cyr suggests that children have better outcomes if they feel that they have a “voice” in the process and often report that they feel ignored if they do not, particularly if the child is older (references set out below).
- B. It is important for the views and perspectives of children to be considered when decisions are being made about them, including asking them whether they would like to meet the judge.

**X. The Child's Expanding Role in the Process**

- A. Many US states and Canadian provinces allow for judicial interview of children. Judicial interviews elsewhere generally are not as common as they are in Ohio or in the Canadian province of Quebec. The law in Ohio essentially requires a judicial interview if requested by a parent while the law in Quebec focuses on the child's right to be heard. Most other states and provinces focus on the discretion of the judicial officer to decide whether to hear directly from a child.
- B. Article 12 of the 1989 UN Convention on the Rights of a Child
  1. State parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
  2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial ... proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the



procedural rules of national law.

3. Consider, even though the US is not a signatory to the United Nations Convention on the Rights of The Child, a treaty that recognizes the right of children to participate in the family justice system, is the increasingly accepted view of the child's role in family law matters as set out in the Convention worth considering



## JJRA Changes to the JJDPa (2018)

David Hejmanowski, Judge  
Delaware County Probate/Juvenile Court  
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## JJDPa History

- ◆ The Juvenile Justice and Delinquency Prevention Act was first passed in 1974 and has been reauthorized several times.
- ◆ Prior to 2018, the last reauthorization had been in 2002. The most contentious issue in each reauthorization has been the VCO – Valid Court Order exception.



## JJDPA History

- ◆ The act has generally applied federal requirements to participating states in exchange for federal funding.
- ◆ Among those requirements:
  - ◆ Deinstitutionalization of status offenders
  - ◆ Sight and sound separation from adult inmates
  - ◆ Removal of youth from adult jails
  - ◆ Racial and Ethnic Disparity guidelines



## JJDPA History

- ◆ Anywhere from 45 to 49 states and several federal territories have participated at any given time.
- ◆ Compliance is monitored by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) through state compliance officers.
- ◆ State compliance in Ohio is monitored by the Department of Youth Services.



## JJRA (2018) Changes

- ◆ A number of major changes in state-level compliance and funding were made in the 2018 reauthorization.
- ◆ Community-based prevention and treatment
- ◆ 3-year compliance monitoring cycle
- ◆ Tracking restraint usage
- ◆ Monitoring pregnant inmates
- ◆ Prohibiting solitary confinement of youth



## JJRA (2018) Changes

- ◆ Three substantial changes impact juvenile court judges:
- ◆ The Definition and application of 'adult inmate' as it applies to the confinement of youth with adults and in adult facilities;
- ◆ The confinement of youth charged as adults;
- ◆ Changes to the use of the VCO exception and what is required for a valid VCO.

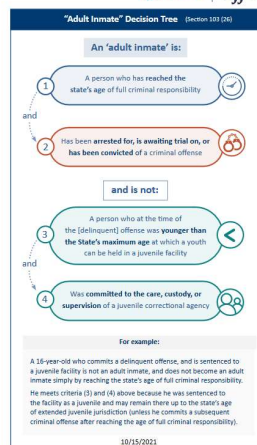


# Adult Inmates

- ◆ The definition of adult inmate has been changed. It now reads:
- ◆ (26) the term “adult inmate”  
(A) means an individual who—  
(i) has reached the age of full criminal responsibility under applicable State law; and  
(ii) has been arrested and is in custody for or awaiting trial on a criminal charge, or is convicted of a criminal offense; and  
(B) does not include an individual who—  
(i) at the time of the offense, was younger than the maximum age at which a youth can be held in a juvenile facility under applicable State law; and  
(ii) was committed to the care and custody or supervision, including post-placement or parole supervision, of a juvenile correctional agency by a court of competent jurisdiction or by operation of applicable State law
- ◆ Clear as mud, right?



# Adult Inmate





## Juveniles Tried as Adults

- ◆ New provisions of the JJRA require that:
- ◆ Not later than 12/21, unless a court finds, after a hearing and in writing, that it is in the interest of justice, juveniles awaiting trial or other legal process who are treated as adults for purposes of prosecution in criminal court and housed in a secure facility
- ◆ Shall not have sight or sound contact with adult inmates; and
- ◆ Except as noted later, may not be held in any jail or lockup for adults.



## Juveniles Tried as Adults

- ◆ In determining whether it is in the interest of justice to permit a juvenile to be held in any jail or lockup for adults, or have sight or sound contact with adult inmates, a court shall consider:
- ◆ The age of the juvenile;
- ◆ The physical and mental maturity of the juvenile;
- ◆ The present mental state of the juvenile, including whether the juvenile presents an imminent risk of harm to the juvenile;
- ◆ The nature and circumstances of the alleged offense
- ◆ The juvenile's history of prior delinquent acts;
- ◆ The relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the juvenile but also to protect the safety of the public as well as other detained youth; and
- ◆ Any other relevant factor

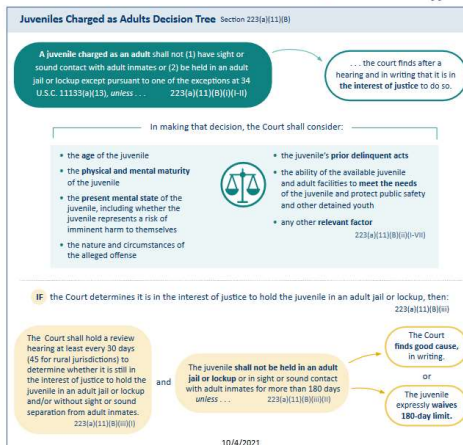


## Juveniles Tried as Adults



- ◆ If a court determines that it is in the interest of justice to permit a juvenile to be held in any jail or lockup for adults:
- ◆ (I) the court shall hold a hearing not less frequently than once every 30 days, or in the case of a rural jurisdiction, not less frequently than once every 45 days, to review whether it is still in the interest of justice to permit the juvenile to be so held or have such sight or sound contact;
- ◆ (II) the juvenile shall not be held in any jail or lockup for adults, or permitted to have sight or sound contact with adult inmates, for more than 180 days, unless the court, in writing, determines there is good cause for an extension or the juvenile expressly waives this limitation.



## Juveniles Tried as Adults





**JUDGMENT ENTRY/MAGISTRATE ORDER ON  
CONFINEMENT OF JUVENILE CHARGED AS AN ADULT**

IN THE \_\_\_\_\_ COURT OF \_\_\_\_\_ COUNTY  
STATE OF \_\_\_\_\_

THE STATE OF \_\_\_\_\_  
vs. \_\_\_\_\_ Case No. \_\_\_\_\_

The Court, having determined that the above-named juvenile charged as an adult should remain in confinement, now must determine the appropriate facility in which that confinement should occur. Pursuant to section 223(a)(11)(B) of the Juvenile Justice and Delinquency Prevention Act (JJDA) (see 34 U.S.C. § 11133(a)(11)(B)), a juvenile who is charged as an adult must not be held in an adult jail or lockup, nor have sight or sound contact with adult inmates, unless the Court determines that it is in the interest of justice, by making certain findings. (Failure to comply with this requirement will result in an instance of noncompliance with the statutory requirement and may affect [STATE'S] ability to receive its full Formula Grants Program funding under Title II, Part B, of the JJDA.)

The Court therefore determines the following:

- The Court has conducted a hearing on this matter, on the record, with the juvenile charged as an adult participating and represented by counsel;
- The Court determines that it ☐ **is** ☐ **is not** in the interest of justice to confine the juvenile in an adult jail or lockup;
- In making this decision, the Court has considered each of the following factors:
  - The age of the juvenile: \_\_\_\_\_;
  - The physical and mental maturity of the juvenile;
  - The nature and circumstances of the alleged offense;
  - The juvenile's prior delinquent acts: \_\_\_\_\_;
  - The current mental state of the juvenile;
  - The juvenile ☐ **does** ☐ **does not** pose an imminent risk of harm to themselves;
  - The available juvenile detention facilities ☐ **can** ☐ **cannot** meet the needs of the juvenile and protect public safety and other detained youth;

h. The available adult facilities ☐ **can** ☐ **cannot** meet the needs of the juvenile and protect public safety;

i. The following other relevant factors:

Based upon these findings the Court determines that ☐ **it is** ☐ **is not** in the interest of justice for the juvenile to be held in an adult jail or lockup.

*(Insert following paragraphs only if determination is made to detain juvenile in an adult facility)*

It ☐ **is** ☐ **is not** in the interest of justice to keep the juvenile sight and sound separated from adult inmates.

Pursuant to the JJDA at 34 U.S.C. § 11133(a)(11)(B), the Court must hold a hearing and review this confinement order at least every 30 days (45 days in rural jurisdictions). This matter shall come before the Court for review of this confinement determination on \_\_\_\_\_.

*(Insert following paragraph only if juvenile is detained in an adult facility more than 180 days)*

Pursuant to the provisions of the JJDA, a juvenile charged as an adult may not be held in an adult jail or lockup or without sight and sound separation from adult inmates for more than 180 days unless certain findings are made, in writing, by the Court. The juvenile in this matter has now been held in an adult facility/without sight or sound separation from adult inmates for 180 days. The Court determines, in writing, that continued confinement is appropriate based upon the following:

☐ The juvenile has expressly waived the 180-day limit.

☐ The Court finds the following good cause for the continued confinement:


Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE/MAGISTRATE

cc: Juvenile and Counsel  
Prosecutor  
Victim Advocate  
Adult Jail/Detention Center

CLEAR FORM

10.19.21



## VCO Exception

- ◆ Generally, the JJDA prohibits the housing of status offenders in detention.
- ◆ As an exception to that rule, a status offender may be housed in detention if that offender has previously been given orders by the court and has been found to have specifically violated those orders.
- ◆ The JJRA narrows the VCO exception.





## VCO Exception

- ◆ For the VCO exception to apply, the JJDPA requires that the following actions occur when a status offender is taken into custody:
  - ◆ An appropriate public agency shall be promptly notified that the status offender is held in custody;
  - ◆ Not later than 24 hours during which the juvenile is so held, an authorized representative of the agency shall interview, in person, such status offender; and
  - ◆ Not later than 48 hours during which the status offender is so held the representative shall submit an assessment to the Court that issued the order, regarding the immediate needs of the status offender.



## VCO Exception

- ◆ The Court must conduct a hearing on the record at which the juvenile has the right to counsel. The Court must determine whether there is reasonable cause to believe that the status offender violated an order and issue a written order that:
  - ◆ Identifies the valid court order that has been violated;
  - ◆ Specifies the factual basis for determining that there is reasonable cause to believe that the status offender has violated such order;
  - ◆ Includes findings of fact to support a determination that there is no appropriate less restrictive alternative available to placing the status offender in such a facility, with due consideration to the best interest of the juvenile;
  - ◆ Specifies the length of time, not to exceed 7 days, that the status offender may remain in a secure detention facility or correctional facility;
  - ◆ Includes a plan for the status offender's release from such facility; and
  - ◆ Provides that the order may not be renewed or extended.



# VCO Exception

## About that assessment:

- “The term ‘assessment’ includes, at a minimum, an interview and review of available records and other pertinent information... by an appropriately trained professional who is licensed or certified by the applicable State in the mental health, behavioral health or substance abuse fields...and which is designed to identify significant mental health, behavioral health, or substance abuse treatment needs to be addressed during a youth’s confinement”
- Requiring an assessment of a status offender taken into custody is not new, but the fact that it now must be conducted by a professional who is licensed or certified in mental health, behavioral health or substance abuse fields is a notable change.



### BENCH CARD on the Requirements Governing the Use of the Valid Court Order (VCO) Exception to the Deinstitutionalization of Status Offenders (DSO) Requirement

Including Amendments to the Juvenile Justice and Delinquency Prevention (JJDP) Act Made by the Juvenile Justice Reform Act (JJRA) of 2018 Bench Card Series

#### Purpose

One of the core aims of the Formula Grants Program, authorized under Title II, Part B, of the JJDP Act (1974) is to reduce or eliminate the institutionalization of status offenders. In order to be eligible for Formula Grants Program funding, a state must meet 33 statutory eligibility requirements, one of which is to provide that juveniles charged with status offenses will not be placed in secure detention facilities or secure correctional facilities, with certain exceptions. One of these exceptions is for a status offender who has violated a valid court order (VCO) issued in connection with the status offense. See 34 U.S.C. § 11133(a)(1)(A). This document outlines the requirements that must be met for states to use the VCO exception (34 U.S.C. 11133(a)(23)), including requirements that were added by the Juvenile Justice Reform Act (JJRA) of 2018.

As statutorily defined, “valid court order” means “a court order given by a juvenile court judge to a juvenile ... (A) who was brought before the court and made subject to such order; and (B) who received, before the issuance of such order, the full due process rights guaranteed to such juvenile by the Constitution of the United States” (34 U.S.C. § 11130(16)).

#### Assessing Immediate Needs of the Status Offender

For the VCO exception to apply, the JJDP Act requires that the following actions occur when a status offender is taken into custody and accused of violating a VCO:

- An appropriate public agency shall be promptly notified that the status offender is held in custody for violating such order;
- Not later than 24 hours during which the juvenile is so held, an authorized representative of the agency shall interview in person, such status offender; and
- Not later than 48 hours during which the status offender is so held the representative shall submit an assessment to the Court that issued the order, regarding the immediate needs of the status offender.

The JJDP Act, as amended by the JJRA, now provides a definition of assessment: “The term ‘assessment’ includes, at a minimum, an interview and review of available records and other pertinent information... by an appropriately trained professional who is licensed or certified by the applicable State in the mental health, behavioral health or substance abuse fields... and which is designed to identify significant mental health, behavioral health, or substance abuse treatment needs to be addressed during a youth’s confinement” (34 U.S.C. § 11130(13)).

While requiring an assessment of a status offender taken into custody is not new, the fact that it now must be conducted by a professional who is licensed or certified in mental health, behavioral health or substance abuse fields is a notable change.

11/1/2021



#### Court Hearing Requirements

The Court must conduct a hearing on the record at which the juvenile has the right to counsel. The Court must determine whether there is reasonable cause to believe that the status offender violated the order and the appropriate placement of the status offender pending disposition of the alleged violation.

Additionally, pursuant to changes to the requirements made by the JJRA, if the Court determines the status offender should be placed in a secure detention or correctional facility for violating the order, the Court shall issue a written order that –

- Identifies the valid court order that has been violated;
- Specifies the factual basis for determining that there is reasonable cause to believe that the status offender has violated such order;
- Includes findings of fact to support a determination that there is no appropriate less restrictive alternative available to placing the status offender in such a facility, with due consideration to the best interest of the juvenile;
- Specifies the length of time, not to exceed 7 days, that the status offender may remain in a secure detention facility or correctional facility;
- Includes a plan for the status offender’s release from such facility; and
- Provides that the order may not be renewed or extended.

#### Subsequent Violations

The maximum period of confinement for a status offender on a VCO is now 7 days. That period of confinement may not be renewed, and the status offender may not be confined again, unless there is a second or subsequent violation of another VCO, after the issuance of the order above.

#### Procedures to Ensure Custody Does Not Exceed 7 Days

Procedures must now be in place to ensure that any status offender held in a secure detention facility or correctional facility pursuant to a court order does not remain in custody longer than 7 days or the length of time authorized by the Court, whichever is shorter.

11/1/2021



## Why Do We Care?

- ◆ The JJRA is more restrictive than Ohio law in each of these areas.
- ◆ What is at stake? Funding:

Table 1: Distribution of Juvenile Justice Formula Grants in Ohio Fiscal Year 2015-2020

Year	State Award Level	Non-Compliance Reduction	Less PREA Reduction	Redistributed PREA Funds	Title II Non-Compliance Redistribution	Title II Allocation
FY2015	\$1,222,016	\$0	(\$20,034)	\$2,010	\$0	\$1,203,992
FY2016	\$1,302,616	\$0	(\$21,377)	\$0	\$2,667	\$1,283,906
FY2017	\$1,060,352	\$0	(\$17,339)	\$0	\$4,939	\$1,047,952
FY2018	\$1,368,220	\$0	(\$22,470)	\$0	\$41,892	\$1,387,642
FY2019	\$1,368,959	\$0	(\$0)	\$1,207	\$0	\$1,370,166
FY2020	\$1,421,634	\$0	(\$0)	\$1,479	\$345,292	\$1,768,405



## Why Do We Care?

- ◆ There are also potential legal consequences. In addition to appellate review, federal legal action is a possibility:
  - ◆ D.B. v. Tewksbury, 545 F.Supp. 896 (1982) – Oregon enjoined from housing status offenders in a joint juvenile/adult facility. Plaintiffs awarded damages and attorney's fees.
  - ◆ Hendrickson v. Griggs, 672 F.Supp. 1156 (1987) – Iowa ordered to comply with the JJDA and prepare a plan to do so within months.
  - ◆ Horn v. Madison County Fiscal Court 22 F.3d 653 (1994)- The JJDA creates a private right of action.



## **Contact Info:**

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# **Marsy's Law Implementation for Juvenile Courts**



# **Marsy's Law Implementation**

**David Hejmanowski**  
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# 1

## Constitutional Amendment

Article I, Section 10(a)



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### Constitutional Amendment

- ◆ November, 2017 election
- ◆ Passed 83%-17%
- ◆ Replaced Amendment 2, passed in 1994
- ◆ 6<sup>th</sup> State to adopt a Marsy's Law
- ◆ \$10.5 million raised in support of the Amendment, \$0 raised against it



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## **Constitutional Amendment**

(A) To secure for victims justice and due process throughout the criminal and juvenile justice systems, a victim shall have the following rights, which shall be protected in a manner no less vigorous than the rights afforded to the accused:

- (1) to be treated with fairness and respect for the victim's safety, dignity and privacy;
- (2) upon request, to reasonable and timely notice of all public proceedings involving the criminal offense or delinquent act against the victim, and to be present at all such proceedings;
- (3) to be heard in any public proceeding involving release, plea, sentencing, disposition, or parole, or in any public proceeding in which a right of the victim is implicated;
- (4) to reasonable protection from the accused or any person acting on behalf of the accused;
- (5) upon request, to reasonable notice of any release or escape of the accused;
- (6) except as authorized by section 10 of Article I of this constitution, to refuse an interview, deposition, or other discovery request made by the accused or any person acting on behalf of the accused;
- (7) to full and timely restitution from the person who committed the criminal offense or delinquent act against the victim;
- (8) to proceedings free from unreasonable delay and a prompt conclusion of the case;
- (9) upon request, to confer with the attorney for the government; and
- (10) to be informed, in writing, of all rights enumerated in this section.



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## **Constitutional Amendment**

(B) The victim, the attorney for the government upon request of the victim, or the victim's other lawful representative, in any proceeding involving the criminal offense or delinquent act against the victim or in which the victim's rights are implicated, may assert the rights enumerated in this section and any other right afforded to the victim by law. If the relief sought is denied, the victim or the victim's lawful representative may petition the court of appeals for the applicable district, which shall promptly consider and decide the petition.

(C) This section does not create any cause of action for damages or compensation against the state, any political subdivision of the state, any officer, employee, or agent of the state or of any political subdivision, or any officer of the court.

(D) As used in this section, "victim" means a person against whom the criminal offense or delinquent act is committed or who is directly and proximately harmed by the commission of the offense or act. The term "victim" does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim.

(E) All provisions of this section shall be self-executing and severable, and shall supersede all conflicting state laws.



ELECTIONS

## Ohio's victims' rights issue triumphs by huge margin

Marty Schladen [mschladen@dispatch.com](mailto:mschladen@dispatch.com)

Published 7:44 p.m. ET Nov. 7, 2017 | Updated 4:54 a.m. ET Nov. 8, 2017



Katie Swift of Clintonville (right) votes on Issue 1 at the voting station located at the Educational Service Center of Central Ohio on Glenmont Ave. on Tuesday, August 2, 2016. (Jonathan Quilter/Dispatch) The Columbus Dispatch

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## Legislative Implementation

House Bill 343  
134<sup>th</sup> General Assembly

8





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## **Implementation**

- ◆ House Bill 343
- ◆ Passed House 90-1 on May 18<sup>th</sup>
- ◆ Passed Senate 32-0 on December 14<sup>th</sup>
- ◆ Signed by Governor on January 5<sup>th</sup>
- ◆ Effective on April 6, 2023



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## **Implementation**

- ◆ Definitions:
  - ◆ - ‘Criminal offense’: An act or omission, punishable by incarceration, but not able to be disposed of by a traffic violations bureau
  - ◆ - ‘Victim’: A person against whom the offense or delinquent act is committed, or a person who is directly and proximately harmed by the commission of the act.



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## **Victim Representative**

- ◆ A victim representative is permitted to exercise the victim's rights if the victim is deceased, incapacitated, a minor, a member of the victim's family, a victim advocate or *any person so designated by the victim*.
- ◆ A victim representative may not be the accused, nor any other person whom the court finds would not act in the victim's interests.



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## **Victim Representative**

- ◆ A victim representative may be removed on motion of the prosecutor or sua sponte by the court, but only if:
  - ◆ - Notice is given
  - ◆ - A hearing is held
  - ◆ - The court finds by a preponderance of the evidence
  - ◆ - The court then appoints a victim advocate, a GAL, or a 'special advocate'



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### **Exercising of Marsy's Law Rights**

- ◆ The victim or victim's representative must 'opt-in' to some rights and protections
- ◆ Supreme Court must prepare a form
- ◆ Law enforcement must provide form to victim
- ◆ Victim may change preferences at any time
- ◆ Form must say whether victim is directly harmed or proximately harmed



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### **Right to Counsel**

- ◆ Supreme Court form must tell the victim they have the right to counsel
- ◆ Attorney is not at public expense
- ◆ Attorney is not appointed by the court
- ◆ Attorney may appear and represent victim's interests at court hearings



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### **Right to Interpreter**

- ◆ The victim or victim's representative has the right to the use an interpreter
- ◆ This right applies in all court hearings and in meetings with law enforcement and the prosecutor's office
- ◆ Moreover, the statutory language says that **all** of these interpreter services are to be paid for by the COURT.



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### **Hearing Notice**

- ◆ HB 343 requires all courts to notify the prosecutor of a hearing day no less than 10 days before the hearing unless all parties agree to a shorter timeline. The prosecutor must then notify the victim of the hearing.
- ◆ Provides that the court may, sua sponte, set a hearing on shorter notice if that shorter notice is 'reasonable under the circumstances'.





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## **Hearing Notice**

- ◆ The court must directly provide notice to the victim (if requested) of:
  - ◆ - Probation or community control revocation hearings
  - ◆ - Hearings on proposed modifications of the terms of probation or community control
  - ◆ - The arrest of a person on probation or community control
  - ◆ - A defendant's failure to complete diversion



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## **Testimonial Rights**

- ◆ The victim and victim's representative may refuse to testify as to address, phone number, place of employment and other personal identifying information
- ◆ Court may review that information in-camera
- ◆ Court may determine that release of the information is required for due process



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## **Testimonial Rights**

- ◆ If information is subpoenaed from the victim and a motion to quash is filed, the court must conduct a hearing. Compliance can be ordered if the court finds:
  - ◆ - Documents are evidentiary and relevant
  - ◆ - Documents are not otherwise reasonably obtainable
  - ◆ - Trial preparation requires the release or the trial may be otherwise delayed
  - ◆ - The subpoena was issued in good faith



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## **Testimonial Rights**

- ◆ Statute now provides that the victim cannot be compelled to participate in an interview on any matter, including the offense
- ◆ The victim may not, however, ignore or disregard a court-issued subpoena or deposition notice



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## **Child Testimony**

- ◆ If the victim is a minor or a person with a developmental disability and that person must testify, requires that:
  - ◆ - Questions be asked in an easily understandable manner, including a 'child-friendly' oath
  - ◆ - There be no harassment
  - ◆ - An advocate be permitted to be present and visible
  - ◆ - Courtroom accommodations be made
  - ◆ - The court provide for flexibility in 'formalities' to provide for the comfort of the child or developmentally disabled person



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## **Child Testimony**

- ◆ Accommodations (cont.):
  - ◆ - A 'comfort item' be permitted
  - ◆ - A screen be allowed that permits the court and jury to see the witness but prevents the witness from seeing the person charged
  - ◆ - A secure and comfortable waiting area where the witness and support person can wait together
  - ◆ - A victim advocate or representative must be permitted to inform the court about the witness's ability to understand and to request necessary accommodations.



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## **Presence and Participation**

- ◆ The victim or their representative have the right to be present for all proceedings
- ◆ The victim, their representative, or their counsel have the right to be heard on any issue that materially affects a victim's rights
- ◆ If the victim is not present, the court must inquire of the prosecutor whether they asked to be notified, were notified, or if the prosecutor met with the victim on the instant issues



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## **Inquiring of Prosecutor**

- ◆ New law requires the court to ask the prosecutor if they have conferred with the victim at any of the following events:
  - ◆ - Granting of pre-trial diversion
  - ◆ - Amending or dismissing a charge
  - ◆ - Agreeing to a negotiated plea
- ◆ If not, the court may not proceed.





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## **Plea Hearings**

- ◆ At any plea hearing, the victim has the right to be present and heard. If the victim is not present, the court may only proceed if:
  - ◆ - The prosecutor states, on the record, that they have conferred with the victim
  - ◆ - The prosecutor discloses reasonable efforts to have notified the victim
  - ◆ - The prosecutor informs the court of any objection by the victim
  - ◆ - The prosecutor informs the court that Marsy's Law has been complied with



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## **Standing to Appeal**

- ◆ If the victim requests a hearing on a victim's right, the court must conduct such a hearing within ten days.
- ◆ The victim has standing to appeal any order of the court that substantively affects their rights.
- ◆ If the court denies the request, it must state its reasons in the order and inform the victim of the right to appeal or seek an extraordinary writ.



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## **Standing to Appeal**

- ◆ An interlocutory appeal must be made within 14 days. A direct appeal must be made within 30 days.
- ◆ Interlocutory appeals have an accelerated timeline, with the Court of Appeals required to rule within 35 days of argument.
- ◆ Any request for an extraordinary writ must be acted upon within 45 days.



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## **Restitution**

- ◆ HB 343 removes the prior prohibition on restitution for minor misdemeanors if they are a 'criminal act' (thus not traffic offenses)
- ◆ Clarifies that restitution to a deceased victim goes to their survivors *or* estate
- ◆ Prohibits the court from waiving the reparations fund costs imposed by previous law



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## **Restitution**

- ◆ Ties restitution amount to ‘economic loss’, minus payments from insurance. Economic loss includes:
  - ◆ - The value (actual or replacement) of stolen or damaged property
  - ◆ - Medical or mental health expenses
  - ◆ - Wages lost, including commissions
  - ◆ - The cost of a specialized vehicle if the victim is permanently disabled



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## **Juvenile Provisions**

- ◆ Eliminates alternative restitution methods from 2152.20
- ◆ Sets preponderance of the evidence standard on determination of ‘full restitution’
- ◆ Permits community service on minor misdemeanors if the community service generates funds to pay restitution



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### **Juvenile Provisions**

- ◆ Creates new juvenile restitution statute in R.C. 2152.203
- ◆ Provides that any money owed to the juvenile by the state should be seized to pay restitution
- ◆ Sets priority of payments if multiple victims
- ◆ Mandates that restitution survives the offender turning 21 in the form of a civil judgment



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### **Juvenile Provisions**

- ◆ Expands circumstances in which juvenile victim testimony may be taken by deposition rather than live during trial:
  - ◆ - Preponderance of the evidence
  - ◆ - That victim will suffer 'serious emotional trauma'



# **Marsy's Law Implementation**

**David Hejmanowski, Judge  
Delaware County Probate/Juvenile Court  
[dhejmanowski@co.delaware.oh.us](mailto:dhejmanowski@co.delaware.oh.us)**





## CRIME VICTIM RESTITUTION AMOUNT SUMMARY FORM

*This form is not intended to be filed with the court.*

Victims of a criminal offense have a constitutional right to receive full restitution from the person who committed the criminal offense or delinquent act against them.<sup>i</sup> Victims may choose to seek restitution, but do not have to. Restitution may be awarded to the victim's estate if the victim is deceased. This form is designed to assist you in gathering information to present at a restitution hearing after the offender has been found guilty or adjudicated delinquent. Restitution does not necessarily cover every loss suffered by the victim. The victim retains the ability to seek damages from the offender in a civil action if necessary.

### WHAT IS RESTITUTION?

Restitution is compensation for "economic loss" due to the criminal offense. Victims can be reimbursed for "economic loss" they had or will have because of the crime, including but not limited to:

- Full or partial payment for the value of stolen or damaged property (the replacement cost of the property or the actual cost of repairing the property if repairs are possible);
- Medical expenses;
- Mental health counseling expenses;
- Wages or profits lost due to injury or harm, including lost commission income and base wages; and
- Expenses related to making a vehicle or residence accessible if the victim is permanently disabled as a result of the offense.<sup>ii</sup>

### HOW DO I REQUEST RESTITUTION?

To receive restitution, you, your victim's representative, or your attorney should let the prosecutor assigned to your case know that you are requesting restitution. This request may be made any time before the defendant is sentenced or the court approves a plea agreement. Make sure the court has enough time to schedule a restitution hearing if one is necessary.

### HOW IS THE AMOUNT OF RESTITUTION DETERMINED?

The court will determine how much the offender pays in restitution. A hearing may be held where you, your victim's representative, your attorney, if applicable, and the prosecutor provide information to show the amount of economic losses you have or will suffer. The court cannot give you more than your economic loss from the criminal offense, so the court will ask if you have received any insurance or governmental assistance. This amount will be subtracted from the court's restitution order. The offender may also provide information.<sup>iii</sup>

### WHAT DO I NEED IN ORDER TO SHOW MY LOSSES?

You, your victim's representative, your attorney, or the survivor of the victim should keep records of all expenses that have been or will be incurred because of the crime to show the amount of your loss (documentation such as invoices, receipts, medical bills, etc.) This documentation is used by the court to determine the amount of restitution the offender is ordered to pay.

### **WHAT IF YOU OR THE OFFENDER DISAGREE WITH THE RESTITUTION AMOUNT?**

You, your victim's representative, your attorney, the survivor of the victim, or the offender may dispute the amount of restitution ordered by the court. The court will then conduct a hearing to discuss the restitution amount and provide you with the opportunity to show why you disagree with the court's determination. You or your victim's representative may be asked to testify at the court hearing.<sup>iv</sup>

### **WHAT HAPPENS IF THE OFFENDER DOES NOT PAY?**

The court ordering the restitution retains the authority to enforce the order until the amount is fully paid. If the offender is a juvenile, the juvenile court will enforce the order until the offender turns 21 years old. After that, the restitution order turns into a civil judgment and can be enforced by the county or municipal court where the offender or victim resides.

### **DOES THE RESTITUTION ORDER EXPIRE?**

No. The offender's obligation to pay restitution lasts until the amount is fully paid<sup>v</sup>, and the amount of restitution, once ordered, cannot be reduced or suspended if you or your attorney objects.<sup>vi</sup> If you request it, the court may allow you to accept a settlement amount that is less than the full restitution order, if the court determines that you were not coerced to agree to the lower amount.

<sup>i</sup> Ohio Constitution Article I, Section 10a(A)(7)

<sup>ii</sup> R.C. 2152.203(B) and R.C. 2929.281(A)

<sup>iii</sup> R.C. 2152.20(A)(3) and R.C. 2929.28(A)(1)

<sup>iv</sup> R.C. 2152.20(A)(3) and R.C. 2929.28(A)(1)

<sup>v</sup> R.C. 2152.203(F) and R.C. 2929.18(A)(1)

<sup>vi</sup> R.C. 2152.203(E) and R.C. 2929.281(D)

## HOW TO USE THIS FORM

This form is intended to assist you or a victim's estate with gathering information necessary for determining the economic losses suffered for purposes of calculating restitution. You will be responsible for providing documentation verifying the amounts listed on this form.

**This form should be given to the prosecutor assigned to your case or your attorney along with the necessary supporting documentation. Be sure to keep copies of your documentation for yourself.**

### SECTION 1: VICTIM INFORMATION

Victim's Name: \_\_\_\_\_ Case number: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_, State: \_\_\_\_\_, Zip: \_\_\_\_\_

Email address: \_\_\_\_\_ Phone number: \_\_\_\_\_

*If a VICTIM'S REPRESENTATIVE has been designated, please provide their name and contact information.*

Name: \_\_\_\_\_ Phone number: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_, State: \_\_\_\_\_, Zip: \_\_\_\_\_

Email address: \_\_\_\_\_

*If the victim has an ATTORNEY, please provide their name and contact information.*

Name: \_\_\_\_\_ Company name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_, State: \_\_\_\_\_, Zip: \_\_\_\_\_

Email address: \_\_\_\_\_ Phone number: \_\_\_\_\_



## SECTION 2: STOLEN OR DAMAGED PROPERTY AS A RESULT OF THE CRIMINAL OFFENSE

The following property was stolen or damaged: \_\_\_\_\_

☐ The property can be repaired.

Item(s) to be repaired: \_\_\_\_\_

\_\_\_\_\_

Cost of repairs: \_\_\_\_\_

Date(s) repairs were made: \_\_\_\_\_

☐ The property must be replaced.

Item(s) to be replaced: \_\_\_\_\_

\_\_\_\_\_

Cost of replacement: \_\_\_\_\_

Date(s) replacement received: \_\_\_\_\_



**Make sure to have supporting documentation for these expenses.**

**RECOMMENDED DOCUMENTATION:** You should provide receipts or other documentation that shows the amount paid for repairs, the date the item(s) was repaired, and who performed the repairs. For property that is replaced, provide invoices or receipts for the purchase of the new item(s). These are expenses that are not covered by any auto, homeowner, commercial property, or any other type of insurance or government program.

## SECTION 3: MEDICAL EXPENSES AS A RESULT OF THE CRIMINAL OFFENSE

I have incurred the following medical expenses not covered by my insurance or government program:

☐ Hospital-related expenses: \$ \_\_\_\_\_

☐ Doctor's office visits: \$ \_\_\_\_\_

☐ Medical equipment expenses: \$ \_\_\_\_\_

☐ Physical therapy costs: \$ \_\_\_\_\_

☐ Eyeglasses or Hearing aids: \$ \_\_\_\_\_

☐ Prescription medicine: \$ \_\_\_\_\_

☐ Other expenses (*specify*) \_\_\_\_\_ \$ \_\_\_\_\_



**Make sure to have supporting documentation for these expenses.**

**RECOMMENDED DOCUMENTATION:** You should provide receipts or other documentation showing the amount paid for hospital bills, doctor visit co-pays, medical or laboratory tests, medical equipment, physical therapy, prescription medicine, and other medically related expenses that are not covered by your health insurance or a government assistance program. You should also document dates of hospital stay and medical appointments. You may also need to show documentation of insurance coverage.

#### SECTION 4: MENTAL HEALTH COUNSELING AS A RESULT OF THE CRIMINAL OFFENSE

I have incurred the following mental health counseling expenses not covered by my insurance or government program:

- ☐ Therapist's office visits: \$ \_\_\_\_\_ ☐ Prescription medicine: \$ \_\_\_\_\_
- ☐ Other expenses (specify) \_\_\_\_\_ \$ \_\_\_\_\_



**Make sure to have supporting documentation for these expenses.**

**RECOMMENDED DOCUMENTATION:** You should provide receipts or other documentation showing the amount paid for mental health counseling, such as therapist office visit co-pays, prescription medicine, and other related expenses that are not covered by your health insurance or a government assistance program. You should also document dates of counseling appointments. You may also need to show documentation of insurance coverage.

#### SECTION 5: LOST WAGES, PROFITS, COMMISSION AS A RESULT OF THE CRIMINAL OFFENSE

I have experienced a loss of income in wages, profits, or commission.\*

- ☐ I lost wages.

Amount of lost wages: \_\_\_\_\_

Date(s) unable to work: \_\_\_\_\_

- ☐ I returned to work on \_\_\_\_\_

- ☐ I will be returning to work on \_\_\_\_\_

- ☐ I will be unable to return to work.

- ☐ I lost profit.

Amount of profit lost: \_\_\_\_\_

Date(s) losses occurred: \_\_\_\_\_

- ☐ I lost commission.

Amount of lost commission: \_\_\_\_\_

Date(s) of lost commission: \_\_\_\_\_

The doctor certifying time off work was: \_\_\_\_\_ Doctor's phone number: \_\_\_\_\_

Doctor's address: \_\_\_\_\_

Did you receive (check all that apply): ☐ Disability ☐ Worker's Compensation ☐ Union/fraternal plan benefits  
☐ Food stamps/cash grant ☐ Crime Victim's Compensation ☐ Other (specify) \_\_\_\_\_



**Make sure to have supporting documentation for these expenses.**

**RECOMMENDED DOCUMENTATION:** You should provide employer contact information, paycheck stubs, Internal Revenue Service W-2 forms, financial statements, tax returns, or other documentation showing the amount of income earned. You should also provide records of any money or reimbursement received as replacement income for your inability to work. For lost commission, documentation of income earned from the twelve-month period prior to the offense date is required. \*You are not entitled to lost wages for time voluntarily attending criminal court proceedings. [State v. Yerkey, 2022-Ohio-4298.]

## SECTION 6: ACCESSIBILITY EXPENSES AS A RESULT OF THE CRIMINAL OFFENSE

I incurred expenses related to making my vehicle or home accessible due to my permanent disability.

☐ Vehicle Modification

Cost of modifications: \_\_\_\_\_

Summary of modifications: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Date(s) modifications occurred: \_\_\_\_\_

☐ Residence Modification

Cost of modifications: \_\_\_\_\_

Summary of modifications: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Date(s) modifications occurred: \_\_\_\_\_



**Make sure to have supporting documentation for these expenses.**

**RECOMMENDED DOCUMENTATION:** You should provide receipts or other documentation that shows the amount paid for modifications made to your vehicle and residence, the date(s) the modifications were made, and who performed the repairs.

## SECTION 7: SUMMARY OF ECONOMIC LOSSES SUFFERED AS A RESULT OF THE CRIMINAL OFFENSE

You are entitled to receive restitution for the amount of economic losses that you have or will suffer. This amount will be reduced by any insurance or governmental assistance you have received as a result of the economic losses suffered due to the criminal offense.

### ECONOMIC LOSSES

Amount paid for repair/replacement of stolen/damaged property	\$ _____	<input type="checkbox"/> I have supporting documentation.
Amount paid for medical expenses	\$ _____	<input type="checkbox"/> I have supporting documentation.
Amount paid for mental health counseling	\$ _____	<input type="checkbox"/> I have supporting documentation.
Amount of lost wages, profit, or commission	\$ _____	<input type="checkbox"/> I have supporting documentation.
Amount paid in making vehicle or residence accessible	\$ _____	<input type="checkbox"/> I have supporting documentation.
<b>Total Economic Losses</b>	<b>\$ _____</b>	

### REIMBURSEMENT OR COMPENSATION RECEIVED AS A RESULT OF THE CRIMINAL OFFENSE

Amount paid by automobile insurance	\$ _____	<input type="checkbox"/> I have supporting documentation.
Amount paid by homeowner's insurance	\$ _____	<input type="checkbox"/> I have supporting documentation.
Amount paid by commercial property insurance	\$ _____	<input type="checkbox"/> I have supporting documentation.
Amount paid by medical insurance	\$ _____	<input type="checkbox"/> I have supporting documentation.
Amount paid by government assistance	\$ _____	<input type="checkbox"/> I have supporting documentation.
Other assistance received	\$ _____	<input type="checkbox"/> I have supporting documentation.
Other (specify) _____	\$ _____	<input type="checkbox"/> I have supporting documentation.
<b>Total Compensation/Reimbursement</b>	<b>\$ _____</b>	

**Total Economic Losses** \$ \_\_\_\_\_ — (minus) **Total Compensation/Reimbursement** \$ \_\_\_\_\_ = \$ \_\_\_\_\_

**Amount of  
Restitution to  
be Requested**



# Know Your Rights

## *Crime Victims' Rights Information*

Victims of crime have constitutionally protected rights. This form provides important information about your rights as a victim of a criminal offense or delinquent act. You will be asked to complete and sign this form so that criminal justice officials know which rights you wish to exercise. The criminal justice official will also sign the form and provide you with a copy of the completed form. You or your victim's representative may request additional copies of the completed form at any time.

### **WHAT IS A VICTIM?**

A victim is a person against whom the criminal offense or delinquent act is committed OR someone who has been directly and proximately harmed by the commission of a criminal offense/delinquent act.<sup>i</sup>

A criminal offense means an alleged act or omission that is punishable by incarceration and is not eligible to be disposed of by the Traffic Violations Bureau.<sup>ii</sup> A delinquent act is a criminal offense committed by a person under the age of 18.<sup>iii</sup>

### **WHAT IS A VICTIM'S REPRESENTATIVE?**

You can designate a victim's representative to exercise your rights as a victim for you or with you. A victim's representative can be anyone you choose other than the person who is alleged to have committed the criminal offense or delinquent act. If the victim is a minor, incapacitated, incompetent, or deceased, the victim's representative can be a member of the victim's family or a victim advocate.<sup>iv</sup>

You must tell law enforcement, the prosecutor, or the court if you are going to name a victim's representative. You can designate a victim's representative on this form now. You can also designate a victim's representative later or change or remove a victim's representative at any time by notifying law enforcement, the prosecutor, or the court.<sup>v</sup>

### **WHAT IS A VICTIM ADVOCATE?**

A victim advocate is a person who will support you and assist you with the court proceedings related to the criminal offense/delinquent act.

### **WHAT ARE MY RIGHTS AS A VICTIM?**

You have rights as a victim. Some rights you are automatically entitled to and some rights you must request. You can choose to exercise all, some, or none of your rights, and you can change your selections at any time.

AUTOMATIC RIGHTS	RIGHTS THAT MUST BE REQUESTED
<p>You are automatically entitled to:</p> <ul style="list-style-type: none"> <li>• Be informed of your rights;</li> <li>• Be treated with fairness and respect for your safety, dignity, and privacy;</li> <li>• Reasonable protection from the accused or any person acting on behalf of the accused;</li> <li>• Receive information about the status of the case;</li> <li>• Refuse a defense interview, deposition, or other discovery request unless ordered by the court;</li> <li>• Object to defense requests for access to your confidential information, including medical, counseling, school, or employment records, access to your personal devices, online accounts, or other personal information;</li> <li>• Be present at all public proceedings;</li> <li>• Have a support person with you during proceedings;</li> <li>• Tell the court your opinion in public proceedings involving release, plea, sentencing, disposition, parole, and any other hearing that involves victims' rights;</li> <li>• Object to unreasonable delays; and</li> <li>• Full and timely restitution from the offender.</li> </ul>	<p>You must REQUEST the right to:</p> <ul style="list-style-type: none"> <li>• Receive notice of the arrest, escape, or release of the offender;</li> <li>• Reasonable and timely notice of all public court proceedings;</li> <li>• Confer with the prosecutor assigned to the case;</li> <li>• Be notified of subpoenas, motions, or other requests to access any of your personal information;</li> <li>• Appoint a Victim's Representative.</li> </ul>

Of the rights that must be requested, you will be asked to select on this form which rights you want to exercise. If you cannot or do not decide when law enforcement first contacts you, then you will be treated as if you chose to exercise all of your rights. **You can change your mind at any time about which rights you choose to exercise.**

Once a prosecutor contacts you about the case, if you have not done so already, you will have to choose which of the rights that are not automatically granted that you want to exercise, or it will then be treated as if you chose not to exercise (waived) those rights. **You can change your mind at any time about which rights you choose to exercise.**

#### **HOW DO I CHANGE THE RIGHTS I WANT TO EXERCISE?**

If you did not choose to exercise some or all of your rights that are not automatically granted to you, you or your victim's representative can request those rights at any time. However, if you choose not to exercise some rights and then request them later, you may give up some rights that only apply during certain stages of the case.

To change the rights you wish to exercise, you must complete a [new Victim's Rights Request Form](#) or make a request in writing and return it to the appropriate criminal justice official.

### **WHAT TO DO IF THERE ARE CHANGES TO MY CONTACT INFORMATION?**

If you have changes to your contact information, you have a responsibility to inform the appropriate criminal justice official of these changes. You must complete a [new "Victim Contact Information" page of the Victim's Rights Request Form](#).

### **CAN I HIRE AN ATTORNEY?**

You have the right to hire an attorney to represent you in court. Your attorney will receive notices about court hearings and meetings that involve your rights in order to represent you.

### **WHAT HAPPENS IF MY RIGHTS ARE DENIED?**

If any of your rights are denied, you may ask the prosecutor to help, hire an attorney, request free legal assistance from Ohio Crime Victim Justice Center at [www.ocvjc.org/request-for-assistance](http://www.ocvjc.org/request-for-assistance) or (614) 848-8500, or represent yourself.

### **CAN I GET AN INTERPRETER?**

Yes. If you are in need of a foreign language or American Sign Language (ASL) interpreter, you have the right to an interpreter at all court proceedings, meetings with the prosecutor, and all investigative proceedings at no cost to you.<sup>vi</sup> You can indicate on this form that you need one and ask the criminal justice official you are working with to help get the interpreter at any time.

### **CAN I KEEP MY PERSONAL INFORMATION PRIVATE?**

Yes, you may register for the Ohio Secretary of State's "Safe at Home" program to keep your home address private. Participants receive a "safe" mailing address to use official documents. Information is available at [www.ohiosos.gov/secretary-office/office-initiatives/safe-at-home/survivors/](http://www.ohiosos.gov/secretary-office/office-initiatives/safe-at-home/survivors/) or (614) 995-2255.

To keep your identifying information private, you or your victim's representative must make a written request for redaction to any law enforcement agency, prosecutor, or court that has your personal information as part of their official duties. For more information on how to do this, contact a victim advocate in your area or the Ohio Crime Victim Justice Center at [www.ocvjc.org/request-for-assistance](http://www.ocvjc.org/request-for-assistance) or (614) 848-8500. These requests should be made as soon as possible to keep your personal information private.

### **HOW CAN I ADDRESS SAFETY CONCERNS REGARDING THE DEFENDANT?**

If you have concerns about your safety and keeping your information private, you have the following options:

- Seek a protection order if you are eligible. The investigating officer will provide resources in your area to assist with requesting a protection order.
- Receive texts, calls, or emails to receive notice of a defendant or offender's release or escape from jail or prison. Register at: [www.vinelink.com/#state-selection](http://www.vinelink.com/#state-selection) or (866) 277-7477.

You do NOT have to talk to, provide information, or provide materials to the defendant, defendant's attorney, or anyone else acting on behalf of the defendant unless it has been ordered by the court. You should contact the prosecutor immediately to let them know you have been contacted.

### **WHAT IS AN ARRAIGNMENT AND HOW IS IT IMPORTANT TO MY RIGHTS?**

An arraignment is a hearing that can happen within a couple days after the defendant is charged with a crime. The judge will decide whether or not to release the defendant on bond, set any bond conditions, and whether or not to issue a protection order.

You have the right to attend the arraignment and tell the judge about any safety concerns and your opinion regarding the defendant's release, bond conditions, and whether or not you would like a protection order.

Law enforcement will notify you of the defendant's arrest and give you a phone number for the clerk of the court where you can get information on the date, time, and location of the arraignment proceeding.

### **CAN I BE COMPENSATED FOR MY LOSSES?**

You have the right to reimbursement for certain financial losses relating to your victimization.

You may be eligible for financial assistance through the Crime Victim's Compensation Fund for expenses such as medical counseling bills, work loss, and funeral expenses even if the suspect has not been arrested or convicted. For more information and to apply, visit [www.ohioattorneygeneral.gov/individuals-and-families/victims/apply-for-victims-compensation](http://www.ohioattorneygeneral.gov/individuals-and-families/victims/apply-for-victims-compensation) or (800) 582-2877.

If the defendant is convicted, you are eligible for restitution. This means the court orders the offender to pay you for certain financial losses relating to your victimization. It is important to keep a record of all expenses incurred as a result of the crime (receipts, invoices, estimates, etc.). The court will use this information to determine what costs are properly included in the amount of the restitution order. *See separate Restitution Information Sheet.*

### **FOR MORE INFORMATION**

- *Ohio Crime Victim's Rights: Helping Crime Victim Rebuild Their Lives*, Ohio Attorney General's Office available at [www.ohioattorneygeneral.gov/Files/Publications-Files/Publications-for-Victims/Picking-Up-the-Pieces-A-Guide-to-Helping-Crime-Vic](http://www.ohioattorneygeneral.gov/Files/Publications-Files/Publications-for-Victims/Picking-Up-the-Pieces-A-Guide-to-Helping-Crime-Vic) or (800) 582-2877.
- General resources for crime victims: Ohio Attorney General's Office, Services for Victims available at [www.ohioattorneygeneral.gov/individuals-and-families/victims](http://www.ohioattorneygeneral.gov/individuals-and-families/victims).
- *Victim's Rights Toolkit*, Ohio Crime Victim Justice Center available at [www.ocvjc.org/victims-rights-toolkit](http://www.ocvjc.org/victims-rights-toolkit).

<sup>i</sup> Ohio Constitution Article I, Section 10a(D)



- ii R.C. 2930.01(A)
- iii R.C. 2930.01(O)
- iv R.C. 2930.02(A)
- v R.C. 2930.02(A) and (D)
- vi R.C. 2930.041

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## Ohio Victim Rights Request Form

This form is required to be given to a victim of a criminal offense or delinquent act by the law enforcement agency investigating the offense pursuant to R.C. 2930.04 and reviewed with the victim by the prosecutor within seven days of the beginning of the prosecution.

As a victim of a criminal offense or delinquent act, I understand the following:

- I am entitled to certain rights as a victim. Some rights are granted to me automatically and other rights I must request.
- I can change my mind at any time about the rights I wish to exercise that are not automatically granted to me.
- If I change my mind about which rights I wish to exercise, I must complete a Victim's Rights Form or make the request in writing and return it to the appropriate criminal justice official.
- I must notify the law enforcement agency, prosecutor, court, or custodial agency anytime my contact information changes.
- I am to receive a copy of this form.



### FOR LAW ENFORCEMENT USE ONLY

<b>AT THE TIME OF FIRST CONTACT</b>	Date: _____
At the first time of contact, the VICTIM <input type="checkbox"/> Did not make an election as to which rights they wanted to exercise. <input type="checkbox"/> Was unable to complete the Victim's Rights Request Form If either of the two boxes below are checked, the victim is considered to have requested all rights not automatically granted to them until the prosecutor first contacts the victim. [R.C. 2930.06]	
<b>SUBSEQUENT CONTACT</b>	Date: _____
<input type="checkbox"/> The victim/victim's representative initiated a change in the rights that are requested. <input type="checkbox"/> The victim/victim's representative changed their contact information.	



***To be completed by law enforcement or the prosecutor:***

Reporting Agency: \_\_\_\_\_

County: \_\_\_\_\_ Agency Phone Number: \_\_\_\_\_

Reporting Officer: \_\_\_\_\_ Badge Number: \_\_\_\_\_

Incident/Report Number: \_\_\_\_\_ Case Number: \_\_\_\_\_

Date and location of arraignment (if known): \_\_\_\_\_

Prosecutor: \_\_\_\_\_ Prosecutor Phone Number: \_\_\_\_\_

## VICTIM'S RIGHTS REQUESTS

You have rights as a victim. Some rights you are automatically entitled to **and some rights you must request. You can use this form to choose to exercise all, some, or none of your rights.** You can change your selections at any time.

### IMPORTANT

The below information can be **completed by the victim or the victim's representative** if one has been designated. Any acknowledgement, election of rights, or affirmative statement made by the victim's representative shall be treated as if the victim made the statement.

### VICTIM STATUS

I acknowledge that I am a victim because I am:

- ☐ A person against whom a criminal offense or delinquent act was committed; or
- ☐ A person directly or proximately harmed by the commission of a criminal offense or delinquent act.

### DESIGNATION OF VICTIM'S REPRESENTATIVE

You may designate a victim's representative to exercise your rights for you or with you. You may choose, change, or remove your representative at any time. You must complete a new Victim's Rights Request Form or make a request in writing and return it to the appropriate official depending on the stage of your case.

- ☐ I do not wish to designate a victim's representative at this time.
- ☐ I would like to designate the following individual as my victim's representative.

Name of Victim's Representative: \_\_\_\_\_

*If a victim's representative has been designated, please include their contact information on the page above.*

*You may change or remove your victim's representative at any time by completing a new Victim's Rights Request Form and return it to the criminal justice official.*

### ELECTION OF YOUR VICTIM'S RIGHTS

As a victim, you are automatically entitled to:

- Be informed of your rights;
- Be treated with fairness and respect for your safety, dignity, and privacy;
- Reasonable protection from the accused or any person acting on behalf of the accused;
- Receive information about the status of the case;
- Refuse a defense interview, deposition, or other discovery request;

- Object to defense requests for access to your confidential information, including medical, counseling, school, or employment records, access to your personal devices, online accounts, or other personal information;
- Be present at all public proceedings;
- Have a support person with you during proceedings;
- Tell the court your opinion in public proceedings involving release, plea, sentencing, disposition, parole, and any other hearing that involves your rights;
- Object to unreasonable delays; and
- Full and timely restitution from the offender.

☐ **I want to exercise ALL of my rights (the automatic rights and those that require me to request to exercise them, outlined below).**

Below are rights that you must request in order to exercise. **You may choose some, none, or all of them.**

**I want to exercise the following rights:**

- ☐ Receive notice of the arrest, escape, or release of the offender;
- ☐ Reasonable and timely notice of all public court proceedings;
- ☐ Confer with the prosecutor assigned to the case;
- ☐ Be notified of subpoenas, motions, or other requests to access any of my personal information; and
- ☐ Appoint a Victim's Representative (if you check this, please fill out the information above).

**You may change these rights at any time by completing a new Victim's Right Request Form and returning it to the appropriate criminal justice official.**

## **REQUEST FOR AN INTERPRETER**

I would like to request:

- ☐ A foreign language interpreter in \_\_\_\_\_ language
- ☐ An American Sign Language (ASL) Interpreter
- ☐ I do not need an interpreter

## VICTIM CONTACT INFORMATION

*Personal identifying information listed on this form shall be filed with the court on a separate page and is not a public record under Ohio Revised Code 149.43.*

### WHO CAN SEE THIS INFORMATION?

- The victim, victim's representative, and the prosecutor may receive unredacted copies of this form.
- The defendant, alleged delinquent child, or their attorney may see the victim's name and completed form without the victim's and victim's representative's address, phone number, email, and other identifying information unless directed by the court. [R.C. 2930.07]

### VICTIM INFORMATION *(Required)*

Victim Name: \_\_\_\_\_

Address\*: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Email address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Is it okay to text you? ☐ Yes ☐ No

Alternate Contact Name: \_\_\_\_\_ Relationship to you: \_\_\_\_\_

Email address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Is it okay to text them? ☐ Yes ☐ No

\_\_\_\_\_  
Victim's Signature

\_\_\_\_\_  
Date

### VICTIM'S REPRESENTATIVE INFORMATION *(Optional)*

Victim's Representative Name: \_\_\_\_\_

Address\*: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Email address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Is it okay to text you? ☐ Yes ☐ No

\_\_\_\_\_  
Victim's Representative Signature

\_\_\_\_\_  
Date

*(\*) If you participate in the Secretary of State's Address Confidentiality Program "Safe at Home", please use the post office box address given to you. For more information call (877) 767-6446.*

## ACKNOWLEDGEMENT OF COMPLETED FORM

***A copy of the completed form shall be given to the victim or victim's representative.***

On \_\_\_\_\_ (Date), a copy of this form was given to the:

☐ Victim: \_\_\_\_\_ (Name)

☐ Victim's Representative \_\_\_\_\_ (Name)

Official's Name: \_\_\_\_\_

Official's Title & Agency: \_\_\_\_\_

Email Address: \_\_\_\_\_ Phone Number: \_\_\_\_\_

\_\_\_\_\_  
Official's Signature \_\_\_\_\_ Date

I, \_\_\_\_\_, (Victim/Victim's Representative) acknowledge that I  
was given this form on \_\_\_\_\_ (Date) by the individual listed above.



### FOR PROSECUTION USE ONLY

#### **POST-CONVICTION NOTIFICATION** *(Complete if applicable)*

I, \_\_\_\_\_ (Name) have informed \_\_\_\_\_,  
the custodial agency of the victim's/victim's representative name and identifying information, to  
allow the custodial agency to notify the victim/victim's representative of the victim's post-  
conviction rights and related post-conviction information.

\_\_\_\_\_  
Prosecutor's Signature \_\_\_\_\_ Date

# The Supreme Court of Ohio

## JUDICIAL COLLEGE

65 SOUTH FRONT STREET, COLUMBUS, OH 43215-3431

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