

HOW CHILD CUSTODY IS DETERMINED IN OHIO

A PRIMER

By
Cathy R. Cook
Attorney at Law
513.241.4029
cathy.cook@cathycooklaw.com
Concentrating In Family Law

CUSTODY CRITERIA

In Ohio, custody determinations are based upon the “best interest” test. This test focuses upon what is in the child’s best interest. In making this determination, the court is required by statute to examine 10 criteria. These criteria are as follows

1. Parents’ wishes

2. Child’s wishes

- a. This will be considered when a child is mature enough to have sufficient reasoning power to have input into the decision.
- b. Someone may tell you that a child 12 or older has the right to decide with whom to live. However, while this was true years ago, it is no longer the case.

3. Child’s relationships with parents & others

- a. This includes grandparents and other extended family important to the child.

4. Child’s adjustment to home, school, community

- a. It is proper for the court to consider the benefit of permitting the children to remain in the marital home

5. Mental & physical health of all

- a. A parent seeking custody waives the physician-patient privilege, and the other parent may obtain information on any physical or mental conditions for which the parent is being treated.

6. Parent more likely to honor & facilitate parenting time rights & failure to grant parenting time

- a. Where one parent denies the child to the other parent, this is a significant factor to award custody to the other parent

7. Failure to pay child support

- a. This is generally less determinative than other factors absent unreasonable & willful neglect

8. History of domestic violence, abuse, or neglect

- a. The court is specifically required to use this factor against granting custody or shared parenting to this parent; to grant custody or shared parenting, the court must find it's in child's best interest & make written findings of fact to support that determination

9. Whether either parent resides or plans to reside out of state

10. Any other relevant factor

- a. This is the catch all provision to deal with unique circumstances not contemplated by the other 9 factors.

In addition to the statutory factors, other factors have developed by court decisions. The two most prominent are:

1. Primary Caregiver

- a. The parent who has provided the day to day care of the children is given additional consideration.
- b. This factor applies more in cases involving young children.

2. Direct adverse impact

- a. This factor is considered where a parent's actions, lifestyle, or moral values significantly endanger the children's physical well-being or mental, moral, or emotional development.

SHARED PARENTING

Ohio, like most states, has steered away from the idea of custody and visitation. Parents don't visit their children, they parent them. Thus, rather than custody, we now refer to the custodial parent as the residential parent and legal custodian. The non-residential parent has parenting time, rather than visitation.

When both parents have custody, it is known as shared parenting, rather than the old term of joint custody. Shared parenting, in essence, means shared decision making. In a shared parenting plan, both parents have equal rights to make decisions regarding their children's medical care, schooling, religion, discipline, and the like. The parents must discuss these issues. If they cannot agree, they must attempt mediation before they may resort to the court to resolve the dispute.

There are two myths associated with shared parenting. First, that it means equal time. Shared parenting can involve equal time, but in the majority of cases, it does not. One parent still have primary physical custody of the children. The second myth is that shared parenting reduces child support. This only occurs if the parents share equal time and have relatively equal incomes. Normally, support is still paid to the parent who has primary physical custody.

When one party seeks shared parenting and the other seeks full custody, the court must review the factors above as well as the following factors to determine if shared parenting is in the best interest of the child

- 1. Ability of the parents to cooperate & make decisions jointly - this is the crux of shared parenting**
- 2. Ability of the parents to encourage love, affection, & contact between the child & the other parent**
- 3. History of, or potential for, child or spousal abuse, domestic violence, parental kidnapping**
- 4. Geographic proximity of parents to each other**
- 5. Recommendation of guardian ad litem**
 - a. The guardian is a person (usually an attorney) appointed by the court to independently review the situation and recommend a parenting arrangement that is in the children's best interest. Guardians are not involved in every case.**

6. If a parent wants shared parenting, he or she must submit a plan at least 30 days before the custody hearing.

PARENTING INVESTIGATION

When the parents cannot agree upon a parenting arrangement, a custody investigation must be conducted. In many counties, a court parenting department is available to conduct the investigation. This department is staffed by social workers who interview the parents and children (if old enough), review records (medical, psychological, criminal, school), witness questionnaires, and conduct home visits. The custody investigator then writes a report, reviewing the factors stated above. The report concludes with a recommendation for shared parenting or sole custody to one parent.

If the court does not have a parenting department, the parties may have to retain an outside investigator. This person conducts a similar investigation to the one the court's parenting department would, but the full cost is paid by the parties.

In addition to the parenting investigation, the parties may each request that the other have physical or mental health examinations performed. These would be done to determine the parent's fitness to handle parenting duties. These examinations are at the parents' expense.

DO'S & DON'TS

To put yourself in the best position to obtain what you desire regarding the custody of your children, follow these principles.

1. Don't move out of the house

a. As long as you can maintain a civil relationship with your spouse in front of the children, remain in the house. This will keep you in the children's lives on a daily basis.

2. Do continue your role with the children and increase it, if possible

a. Continue all the care for the children and activities with them that you have in the past. As you will soon take on a sole parenting role when they are with you after divorce, begin taking on the roles with them that you've let the other parent play.

3. Do become acquainted with your children's doctors, teachers, coaches, care givers, and other important non-relatives in their lives. If you're already acquainted with these people, let them know what is occurring so they can help you help your children through this difficult time.

4. Don't undermine your children's relationship with the other parent.

a. Experts in child custody believe that children need both parents. When one parent puts down the other to the children and discourages the children's relationship with him, this is called parental alienation. Don't allow yourself to transfer your feelings about your spouse to your children.

b. If you believe your spouse is engaged in parental alienation of the children, get the children involved in counseling as soon as possible.

The above is an overview of custody in the state of Ohio. It is not a substitute for legal advice. Your own situation should be reviewed and analyzed by an attorney.