



“Character is the only secure foundation of the state.”

– Calvin Coolidge

The family is the basic unit that ensures the biological and cultural continuation of society. So that families function as well as possible, the law establishes rights and duties for family members (generally parents and their children) and a method to enforce these rights and duties. For example, the state sets rules for creating marriages and, through a court, the state approves (or grants) a divorce or dissolution of marriage.

The rights and duties of the people involved in the family and the process of enforcing these rights and duties are often grouped together under the term *family law*.

Marriage

Marriage involves a man and a woman who are responsible for each other’s well-being and the well-being of their children. Because the relationships between spouses and between parents and their children are so important to a healthy society, the state encourages people considering marriage to be cautious and wise.

Pre-Marriage Counseling

Pre-marriage counseling is advisable for all couples regardless of their age or prior marriages. Conferences with an experienced counselor help prepare the couple to manage the problems that arise in any marriage. However, if both of the prospective spouses are 18 or older, pre-marriage counseling is not mandatory. If either of the parties is under 18, Ohio law requires the couple to have pre-marriage counseling.

Couples who belong to a religious organization can arrange counseling with their religious or spiritual leader. (Some religious bodies require pre-marriage counseling.) Pre-marriage counseling is also available from many

social agencies and from professional marriage or family counselors. The probate court also might provide information about local sources for pre-marriage counseling.

Marriage as a Three-Way Contract

Marriage is a three-way contract involving the state and the two people who are joined in marriage. The parties’ marriage vows create a binding contract. Under Ohio law, the state is automatically a party to the contract because of the importance of the family, and because the ordinary methods used to enforce contracts do not work with a marriage contract. For example, a court can order payment of child support or grant visitation rights, but the orders likely would be unenforceable without the power of the state. The state’s presence helps protect the interests of the state, society and any “third party beneficiaries,” such as children.

Who May Marry

Under Ohio law, unmarried men 18 or older and unmarried women 16 or older are legally permitted to marry. A person under 18 years of age must obtain the consent of his or her parents, guardian, or custodian. Parental consent is unnecessary in situations where the parent whose consent is required:

- lives in a foreign country;
- has neglected or abandoned the minor who wishes to marry;
- is an inmate in a mental or penal institution; or
- has been deprived of custody of the minor by the court.

In addition, a woman who is under 16 and pregnant may obtain permission to marry from the juvenile court. (Note that the juvenile court is not required to grant permission.)

Someone who already is married cannot legally enter into another marriage. A married person who knowingly enters into another marriage is a bigamist. *Bigamy* is a crime that automatically makes any later marriage(s) invalid. Even so, Ohio law permits the later spouse to get a *court-ordered divorce* or *annulment*, which officially ends a bigamous relationship and helps resolve questions of spousal support, legitimacy of children and child support.

The Marriage License

A marriage cannot occur unless the parties have a license. A couple may apply for a license in the probate court of the county where either party lives, or in the county where the ceremony is to be performed. Before February 2001, Ohio marriage licenses were not issued in fewer than five days from the date of application unless, for good cause, the probate judge waived this “waiting period.” Now, it is no longer necessary for couples to go through a waiting period before obtaining a marriage license.

A blood test is not necessary to obtain a marriage license. However, probate courts do not issue a marriage license to any person who, at the time of the application, is under the influence of alcohol or a drug of abuse, or who is suffering from a communicable form of syphilis. Once issued, a marriage license is valid for 60 days. If the couple does not marry within that time, they must get a new license.

The Marriage Ceremony

The law does not prescribe the actual words of the marriage ceremony. In Ohio, only a person authorized to perform marriage ceremonies can solemnize a marriage. Authorized persons include:

- regular clergy (who are licensed by the secretary of state to solemnize marriages);
- municipal, county and probate court judges;
- mayors; and
- the superintendent of the State School for the Deaf.

Further, a religious society may perform a marriage. The provision allowing a religious society to perform a marriage ceremony recognizes the practice of having couples publicly exchange marriage promises and then proclaim to the congregation that they are wed. The person officiating at a marriage ceremony must sign the marriage certificate and file the certificate with the probate court within 30 days after the ceremony.

Ceremonial Versus Common Law Marriages

Historically, the law has recognized two methods of establishing the marital relationship: *ceremonial marriage* and *common-law marriage*. In a ceremonial marriage, the couple obtains a license from the probate court and a person authorized by the state conducts the marriage. Once the ceremony is finished, the authorized person completes the certificate of marriage and files it with the probate court within 30 days.

Common-law marriage, recognized in Ohio until 1991, was established by the conduct of the parties and was not dependent on an official license, ceremony, or certificate. Before 1991, Ohio allowed persons who claimed to have entered into a common-law marriage the opportunity of proving that such a marriage did exist. Once a court—or sometimes an agency—decided that a person claiming marriage had offered sufficient proof, the common-law marriage was established, at least for the purposes of that court or agency.

Couples claiming to have entered into a common-law marriage must prove:

- competence to marry (each party must have been the appropriate age and not married to another);
- cohabitation;
- that they have conducted themselves publicly as a married couple;
- that they have developed a reputation in the community as a married couple; and

- their intent—or their agreement, at some point during their relationship—that they are husband and wife.

Ohio does not now accept proof of common-law marriage in relationships that were entered into in Ohio on or after Oct. 10, 1991. In some circumstances, however, Ohio will accept proof of a common-law marriage if the couple entered into such a relationship in another state that recognized common law marriages at the time the couple committed themselves to one another.

The question of the existence of a common-law marriage usually arises when one of the parties dies and the surviving party claims the rights of a surviving spouse. For example, the surviving party may make a claim for inheritance, Social Security, insurance, or workers' compensation.

Just as with a ceremonial marriage, a divorce or dissolution is necessary to end a common-law marriage.

Same-Sex Marriage

As of December 2, 2004, Ohio specifically banned same-sex marriages.

Currently, only Vermont recognizes a legal relationship between same-sex persons through its civil union law. It is questionable whether the state of Ohio would recognize the civil unions of same-sex Vermont couples.

Because same-sex couples in Ohio have few or no legal rights through the family law statutes, unmarried couples generally use private contracts or cohabitation agreements to define the rights and obligations each party has to the other.

A *cohabitation agreement* typically defines each right and obligation, property, support and any other issue an unmarried couple may face while living together and in the event of a dispute or break-up. Such an agreement may address issues such as property ownership division, financial resources, a partner's death or disability, and even the sharing of household duties and expenses. Because Ohio law does not recognize these contracts, they cannot be enforced in domestic relations courts. However, cohabitation

agreements may be enforceable under Ohio's contract and partnership laws, depending on all the circumstances of the case. At this time, a cohabitation agreement is the best available means for unmarried partners to determine their own legal future and protect their interests.

Family Rights and Obligations

Ohio law establishes a variety of rights and duties for married couples concerning their relations with one another and with their children. Similarly, the law establishes a variety of rights and duties for children concerning their relations with their parents.

Rights and Obligations of a Married Couple

According to Ohio law, married partners are expected to give each other mutual respect, fidelity and support. Each spouse must support himself or herself, the other spouse and any minor children. This support is described in the law as the provision of *necessaries*. Necessaries generally are defined as food, clothing, shelter and medical care.

Providing support is considered so important that spouses or parents found guilty of neglecting their duties may face civil and criminal liability with stiff penalties. For example, a spouse may be held liable for the enormous medical expenses incurred during a lingering illness of his or her spouse, even though the healthy spouse had no contract with the medical providers.

Married partners are on equal footing with respect to personal and property rights. With certain limited exceptions, each may own and dispose of property as if unmarried. Each has the right to enter into contracts without the other. Neither can be excluded from the family home, except by court order.

Historically, a wife had few rights apart from her husband. When a woman married, most of her

property became her husband's and she was almost totally under his control. Under older versions of the common law, a husband could, within certain limits, physically assault his wife. Today, physically assaulting a spouse is punishable as a crime (domestic violence).

Obligations of Parents to Their Children

Parents are obliged to support their children. The obligation to provide support includes:

- ensuring that the children have food, clothing, shelter and medical care;
- ensuring that they attend school;
- supervising their behavior and using appropriate discipline when necessary to achieve proper conduct; and
- fostering and protecting their physical, mental and moral well-being.

Failure to meet any of these obligations may result in various kinds of criminal and civil liability for the parents.

In a practical sense, parents are obligated to provide adequate support to their children, at least until the children are through high school. The question of what is "adequate support" is answered on an individual basis. "Adequacy" depends upon the parents' ability and financial resources. Support may be considered to be adequate if the parents are doing the best they can, given their particular circumstances.

The legal obligation to support children applies whether the parents are married to each other, married to a subsequent spouse, or were never married at all, and regardless of whether the parent has custody of the children. Non-support of children is a criminal offense.

The obligation to provide child support may be enforced through a variety of court actions. An action may be brought by the mother of an illegitimate child to force the father to provide support. Other actions may be brought in connection with divorce, dissolution of marriage, annulment, or spousal support lawsuits. In some cases, a welfare agency will file lawsuits. The state of Ohio also

helps enforce the support obligations of out-of-state parents.

Obligations of Children to Their Parents

Children have certain responsibilities to their parents. Children are obligated to respect their parents and perform, within their abilities, the family duties that are asked of them. They must:

- obey their parents, teachers and others in authority over them;
- apply themselves the best they can to master the instruction and schooling given them; and
- behave according to acceptable standards.

An adult child also is obliged to provide support if a parent is financially unable to support himself or herself, either due to sickness or old age. As with parents' obligation to support minor children, this obligation is conditioned by the adult child's ability and financial means. An adult child's obligation to support a parent does not apply if the parent has abandoned the child or failed in his or her obligation of support to the child.

Family and Medical Leave

Just as our society recognizes the obligation of a spouse or parent to provide care in the case of illness of a family member, society also has recognized certain obligations of the whole community to provide help. (*For example, see the discussion of the federal Family and Medical Leave Act [FMLA] in Part XI, "Workplace Law."*)

Minors and Their Rights

For most purposes, a person is considered an adult at age 18. Persons under 18 are called *children, minors, or juveniles*. While minors have many personal rights, they do not have all the rights of adults.

The Age of Majority

The age at which a child (minor or juvenile) becomes an adult is known as the *age of majority*. Under federal law, every person is allowed to vote at age 18. In Ohio, 18 is the age of majority for voting and most other purposes. The major exception to that rule involves liquor control laws. Persons under 21 are not permitted to purchase any alcoholic beverage.

Minors in General

The law often treats minors differently from adults, since minors frequently lack the knowledge, experience and judgment to truly fend for themselves.

Some rights and obligations do not apply to minors the same way that they apply to adults. Society does not hold very young children responsible for criminal acts. Courts also treat older children differently from adults for criminal acts in most cases. For example, a person under age 18 is allowed substantially less alcohol concentration than an adult when operating a motor vehicle. (While persons under 21 may not buy any alcohol, they are permitted to consume it for ceremonial purposes within the family.) One rationale for the lower alcohol concentration allowed for minors is that a combination of alcohol and already-reduced judgment due to their age makes juveniles more likely to be involved in accidents.

Apart from the criminal law, minors may be subject to more, and different, controls on their behavior than adults. Minors must have parental permission to do certain things. For example, minors generally need parental permission to marry, or to obtain medical treatment. While minors can own property, it is often necessary that a guardian hold and manage such property. The right of minors to enter into contracts also is limited. (See Part VI, “Contracts,” for a discussion of a minor’s capacity to enter into a contract.)

Minors are barred from certain occupations, and their employment in other occupations is subject to legal limits on child labor. For example, minors may not engage in occupations that are

hazardous or detrimental to their health and safety, such as meat packing and slaughtering, mining, and the manufacture of chemicals, explosives, or radioactive material. Certain licenses cannot be granted to minors. For example, to obtain a license to practice law in Ohio, an applicant must be at least 21 years of age. Other licenses, such as a driver’s license, can be granted to minors only under certain conditions. The ability of minors, especially very young children, to act as witnesses in court also is limited. Under the Ohio Rules of Evidence, a child under age 10 cannot be a witness unless the judge determines, after separately questioning him or her, that the child’s testimony is likely to be honest and truthful, and not the result of what someone else may have instructed the child to say.

Parents can be held responsible or liable for up to \$10,000 if their children willfully damage property or willfully and maliciously assault another person. Moreover, an adult who signs for a minor’s driver’s license may be held liable for any amount of damage the minor causes in an accident, if the minor is driving without insurance.

Constitutional Rights of Minors

While minors do have rights under the constitution, they are somewhat restricted. For example:

- Minors do not have complete freedom of speech and assembly under the First Amendment to the U.S. Constitution. For instance, the state can limit access to books, magazines, movies and other materials adults can freely obtain, view, or possess. Ohio law places restrictions on matter that is not obscene from an adult viewpoint, but is considered unsuitable for juveniles.
- Minors cannot freely keep and bear arms. Under federal and Ohio law, a minor cannot buy any kind of firearm and a person under 21 cannot buy a handgun. A minor under 16 cannot hunt without an accompanying adult. Except for lawful hunting, no minor of any age can possess a firearm unless it is used for instruction in firearms safety, care, handling, or

marksmanship under competent adult supervision.

- Searches and seizures that would be unconstitutional if they involved an adult may be constitutional when they involve a juvenile. For example, it may be proper, under certain circumstances, to search a school locker. Schools have a duty to take weapons, drugs and other dangerous items away from students.
- A minor accused of juvenile delinquency may be held without bail before trial if the court finds there is a serious risk that the minor may commit an act that would be a crime if committed by an adult. (A minor does not have the right to bail in a juvenile proceeding.)
- Minors have certain other rights that, at least partially, make up for the fact that they don't have the right to bail. For example, the law favors releasing minors into the care of their parents. In such a case, the minor does not have to stay in jail while awaiting trial, and the minor's parents do not have to pay bail for the minor's release. Also, a minor who is held in jail while awaiting trial must be kept separate from adults and must be given a detention hearing within 12 hours of admission or the next court day after admission. Further, a minor who is held *after* the detention hearing must be kept separate from adults and is entitled to a court hearing within 10 days of the filing of the complaint.
- A minor may lose his or her liberty for actions that would not be criminal if committed by an adult. For example, a minor who engages in sexual relations may be committed to a juvenile institution as an unruly child.
- Finally, a minor does not have the right to a jury trial in juvenile proceedings.

Contractual Rights of Minors

Minors do not have full rights to enter into contracts. A minor who enters into a contract with an adult has the option to either honor or cancel the contract before complying with (or performing) the terms of the contract. By complying with the terms, the minor is acting in a way that honors

the contract, so the contract will be binding on the minor as well as the adult.

A minor who chooses to cancel a contract must take action to cancel the contract before becoming 18 years of age. However, a minor cannot cancel a contract if the cancellation would cause an unfair result, or allow the minor to benefit from his or her own wrongdoing. For example, a minor cannot purchase a car, wreck it, then cancel the contract and expect not to have to pay for the car.

Finally, in some situations, a minor can enter into a binding contract and not have the right of cancellation. These situations generally involve contracts for necessities such as food, clothing, shelter and medical care. The minor's parents may be held liable on contracts for necessities. Contracts for medical care raise special questions and are addressed below.

Seeking Medical Aid

While the general rule is that minors cannot be given medical treatment without consent by a parent, guardian or custodian, there are major exceptions to the rule, such as the following:

- Permission for treatment of a minor need not be obtained in an emergency.
- A minor age 16 or over may voluntarily enter a mental hospital for treatment for mental illness arising from drug abuse.
- A minor of any age can obtain medical treatment for any condition arising from drug abuse or for venereal disease.
- Pregnant minors may have abortions in certain circumstances.

Ohio has a parental notification law covering the rights of unemancipated pregnant minors seeking an abortion. (Unemancipated minors are still under the authority of their parents.) A simplified summary of that law is stated below.

The Ohio parental notification law defines an unemancipated, pregnant minor as a woman under 18 years of age who has not entered the armed services, has not been employed and self-subsisting, or has not been otherwise independent from the care and

control of her parents, guardian, or custodian. Under the law, an unemancipated pregnant minor must notify at least one parent, or her guardian or custodian, of an intention to have an abortion. If the parent, guardian, or custodian consents in writing, the minor may have the abortion. In certain circumstances, the minor may avoid notifying her parents, guardian, or custodian by requesting that notice be given to a sister or brother who is 21 years old, or to a stepparent or grandparent. Notice is not necessary if the minor is found to be mature and well enough informed to intelligently decide for herself whether or not to have an abortion. Further, in certain circumstances (for example, in cases where the minor fears abuse from whoever would normally receive notice), the minor may avoid giving notice to anyone.

Where notice is to be given to a sister, brother, stepparent, or grandparent, or where no notice will be given to anyone, the minor must file an application with the juvenile court. Application forms are available from juvenile courts without charge.

Where notice is to be given to someone other than the parent, guardian or custodian because the minor fears harmful consequences of notifying the parent, guardian or custodian, the application must specify who should receive notice and the child must sign an affidavit stating that the applicant is in fear of physical, sexual, or severe emotional abuse from her parent, guardian, or custodian and that her fear is based on a pattern of physical, sexual, or severe emotional abuse exhibited by the parent, guardian, or custodian.

Similarly, if the minor wishes to avoid any notice at all, the application must be accompanied by an affidavit stating that she is in fear of physical, sexual, or severe emotional abuse from her parent, guardian, or custodian or any other person who would otherwise be entitled to receive notice. The juvenile court must consider any application requesting that notice not be given to the parent, guardian or

custodian. The entire process is confidential, and the applicant is not required to pay filing fees or court costs.

The juvenile court will issue an order authorizing an abortion without notice to the parents, guardian, or custodian where: 1) the court finds that the minor is sufficiently mature and well enough informed to intelligently decide to have an abortion without notifying a parent, guardian, or custodian; or 2) the minor's parents, guardian, or custodian have demonstrated a pattern of physical, sexual, or emotional abuse, and that under the circumstances, notification would not be in the best interest of the minor. If the court does not hold a hearing within five business days after the filing of the application, then it is assumed that the court has consented to the abortion. Further, the court must make its decision immediately after the hearing. If the court does not grant consent it must dismiss the application. The applicant may appeal such a dismissal.

This area of the law is in flux, and federal legislation may be enacted. Because of the confidential relationship between doctor and patient, a doctor does not have to inform the parents that he or she is treating their child. However, the parents are not bound to pay for treatments unless they consent to them.

Finally, there is some case law in Ohio establishing that a minor can consent to any kind of medical treatment as soon as he or she has reached sufficient age and discretion to understand the consequences of consent. This case law applies to "necessary," as well as elective treatment, such as cosmetic surgery. As a practical matter, doctors seldom treat a minor without parental consent, except in the situations described above.

Juvenile Delinquency, Unruly Children, and Juvenile Traffic Offenders

In Ohio, the juvenile court has jurisdiction over minors who commit offenses that would be crimes if committed by adults, or minors who present behavioral problems. The court also has jurisdiction over abused, neglected and dependent children, and it has a wide range of options in dealing with children. The court usually can tailor its dispositions (sentences, fines, treatment orders, to name a few) to meet the needs of the particular child. In addition, the juvenile court may deal with adults guilty of neglecting, abusing, or contributing to the delinquency or unruliness of minors.

The Juvenile Court

In 1902, Ohio became the fifth state to create a juvenile court. Before the juvenile court existed, children as young as age seven were considered criminally responsible for their actions and, if convicted, were treated as adult offenders. The main emphasis of the juvenile court's work is providing for the care, protection and mental and physical development of children, as opposed to punishing them. In certain cases, the court is also charged with protecting the public interest and safety, holding the offender accountable for his or her actions, restoring the victim, and rehabilitating the offender. The juvenile court has exclusive jurisdiction over delinquent and unruly children; juvenile traffic offenders; and neglected, dependent and abused children. When a minor is accused of a crime, whether serious or petty, the general rule is that the minor can be tried and dealt with only in the juvenile court. Under certain circumstances involving very serious offenses, however, a minor over age 14 may be transferred to the common pleas court for trial and punishment as an adult.

Adults accused of contributing to the delinquency or neglect of a minor are tried in the juvenile court. Other adult crimes against minors, such as non-support, may be tried in the juvenile court as well as in other courts.

The juvenile court also has the power to determine and provide for custody and care of neglected, dependent, or abused children. This power is subject to the authority of the domestic relations court to determine custody and support questions in divorce and similar cases, and to the authority of the probate court in guardianship and adoption proceedings. The juvenile court also has the power to consent to the marriage of pregnant minors under 16, and to consent to abortions for unemancipated, pregnant minors.

Detention of Juveniles

Minors may be taken into custody for various reasons. For example, they may be taken into custody because:

- they are accused of committing offenses that would be crimes if committed by adults;
- a juvenile court orders them to appear and they fail to do so;
- there is reason to believe they are runaways;
- they are suffering from illness or injury and are not receiving proper care; or
- they are in immediate danger from their surroundings.

After being taken into custody, a minor may be released to his or her parents, guardian, or custodian on their written promise to bring the minor to court when required. If the minor is not brought to the court hearing, the court may issue a warrant compelling the parents, guardian, or custodian to bring the child to court. If it appears that a minor taken into custody should be detained or given shelter care, the minor may be placed temporarily in a detention home, children's home, juvenile shelter, or other suitable facility, or with a temporary custodian. Detention is not favored under juvenile law. Detention (including shelter care) is used only where:

- it is necessary to protect the person or property of the minor or of others;

- the minor may run away or be removed from the court's jurisdiction;
- there is no suitable person to supervise and care for the minor; or
- the court determines that detention is in the minor's best interest.

A minor alleged to be delinquent, unruly, or a juvenile traffic offender may be detained in a jail only if there is no available juvenile detention home or similar facility. In such cases, the minor must be kept in a separate room where he or she cannot come in contact with adult offenders. A neglected or dependent minor who is detained cannot be kept in jail under any circumstances without a specific court order authorizing such detention.

Delinquent Children

A *delinquent child* is one who commits any act (other than a juvenile traffic offense) that would be a crime under state, municipal, or federal law if committed by an adult, or who fails to obey an order of a juvenile court. For example, a child is charged with delinquency whether the offense in question is murder or merely disorderly conduct.

Juveniles have most of the rights of adults charged with criminal offenses. For example, in delinquency proceedings, a minor has the right to:

- be represented by counsel (and if the minor or the minor's parents cannot afford an attorney, the state will provide one at no cost to the family);
- have a clear and explicit statement of the offense;
- have the state prove each of the elements of the offense beyond reasonable doubt; and
- have applicable rights explained at significant stages of the proceeding.

A major way in which the law governing children differs from the law governing adults is that minors traditionally have not had the right to jury trial or the right to bail. However, with *blended sentencing* (discussed below), certain juveniles accused of serious offenses have the right to bail and a jury trial.

A child who the court finds has committed the acts as charged is classified as delinquent.

Because juvenile courts seek to rehabilitate children rather than to punish them, judges impose *dispositions* rather than to hand down sentences in juvenile cases. The seriousness of an offense comes into play when the court imposes its disposition, fine, order for treatment, or other disposition order. For example, a minor who has been classified delinquent for disorderly conduct may only be required to perform community service, whereas the minor who has been classified delinquent for robbery may serve a term in a state-run juvenile facility. Effective in 2004, a juvenile may be sent to a local juvenile detention facility for up to 90 days. If the offense would be a felony if committed by an adult, the juvenile can be sent to a state-run juvenile facility. Where there is a heinous offense (such as murder), the court may transfer the child to the common pleas court to be tried and punished as an adult, provided the child was at least 14 years old when the act occurred.

If a minor is found to be delinquent, the juvenile court has many options in its disposition of the minor. The court may, for example:

- allow the child to stay at home but place the child on probation;
- require restitution to the victim (to make up for the damage, loss or injury);
- send the child to a school, camp, institution or other facility;
- send the child (for certain offenses) to a facility operated by the Ohio Department of Youth Services (ODYS);*
- revoke the child's driver's license;
- suspend or revoke the registration of all motor vehicles registered in the child's name;
- impose a period of electronically monitored detention;
- require that the child attend a drug- or alcohol-abuse program;
- impose a fine plus court costs; and
- order appropriate treatment or education for a child who suffers from physical, psychological, developmental or other problems.

* Note: A child who commits an offense that is a felony of the 3rd, 4th or 5th degree if committed by an adult can be committed to ODYS for a minimum period of 6 months. A child who commits an offense that is a felony of the 1st or 2nd degree of committed by an adult can be committed to ODYS for minimum period of 1 year. The maximum time a juvenile delinquent can be held in an ODYS facility is until his or her 21st birthday. The juvenile court's jurisdiction over the person ends when that person turns 21. This is true not only for delinquents, but also for unruly, abused, neglected, and dependent children and juvenile traffic offenders.

Even though trial procedure in juvenile court may be somewhat less formal than in other courts, the power of the court is obvious. The court building is a secure place served by the sheriff and the police. Detention facilities, and some shelter care facilities, are staff secure (meaning a staff member keeps track of who comes and goes) and limit the freedom of their inhabitants. Whatever the court decides to do can dramatically affect the freedom and life of the minor and the minor's family.

Transfer for Trial as an Adult

The juvenile court may transfer a minor to the common pleas court for trial and punishment as an adult in serious cases and under limited circumstances. (This transfer is often called a *bindover* because the child is "bound over" to the adult court.) The court has this option when:

- the minor was 14, 15, 16, or 17 when the offense occurred;
- the offense would be a felony if committed by an adult;
- there is probable cause to believe the minor committed the offense; and
- after full investigation, including mental and physical examinations, the juvenile court finds either of the following:
 - 1) that the minor will not comply with or benefit from rehabilitation offered by any facility or program in the juvenile system; or

- 2) the safety of the community requires that the minor be placed under legal restraint, even after the person turns 21.

As a practical matter, juvenile courts exercise the discretion to transfer juveniles to adult courts only in serious cases where the accused minor has a long history of delinquency. In no case can a minor under age 14 be transferred to adult court. Also, in no case can a minor of any age who is accused of a misdemeanor be transferred to adult court. Once a minor has been bound over to, and convicted in, a common pleas court, he or she will not go through the bindover process again. If later charged with a felony while still a minor, he or she automatically will be treated as an adult and tried in adult court.

In addition to discretionary bindovers, juvenile courts must transfer to adult courts juvenile offenders who are accused of certain serious offenses. This mandatory bindover occurs when:

- a 16- or 17-year-old child is accused of aggravated murder, murder or attempted murder;
- a 16- or 17-year-old child, with a prior commitment to ODYS for a serious offense, is accused of another serious offense (including manslaughter, aggravated robbery and rape) or used, displayed, brandished or indicated a firearm in committing the offense;
- a 14- or 15-year-old child, with a prior commitment to ODYS for a serious offense, is accused of aggravated murder, murder or attempted murder.

A special rule applies to minors who are accused of an offense that would be murder or aggravated murder if committed by an adult. Under the special rule, the court must transfer the minor to the appropriate common pleas court for trial (and possible punishment) as an adult, as long as the court finds, after an appropriate hearing, that there is probable cause to believe the minor committed the offense. This is also true if the minor had been judged a delinquent before for an offense that would have been murder or aggravated murder if committed by an adult. Under this

special rule, the minor's age is not a factor. The current charge and the past judgment are the issues that matter.

Blended Sentencing

For years, when a juvenile court faced a child accused of a very serious offense, it had two choices. If the child was age-eligible, the court could transfer the child to adult court, essentially admitting that the juvenile system could not help the child. Or, it could keep the child in the juvenile system with the knowledge that the offender would have to be released by age 21, even if still dangerous. This often was a quandary for courts, since the future conduct of a 14- or 15-year-old child is difficult to predict. Based on proposals from the Ohio Criminal Sentencing Commission, in 2002 the General Assembly enacted a third option: blended sentencing.

Since 2002, juvenile courts have had the option to give both a juvenile disposition and an adult sentence to certain *serious youthful offenders* (SYOs). Eligibility for this "blended" juvenile/adult sentence depends upon the age of the offender and the severity of the offense. In imposing a blended sentence, the juvenile court first gives a juvenile disposition (for example, a term in an ODYS facility). The court then gives a sentence as if the offender were before an adult court. However, the court must then suspend the adult sentence. If the offender makes it through the juvenile disposition without serious incident, that is the end of the sentence. However, if the offender commits certain other offenses and engages in certain threatening conduct while under the juvenile term, the court may invoke the adult sentence after a hearing on the new violation.

Unruly Children

A minor may be deemed an *unruly child* for a variety of reasons, including:

- waywardness or persistent disobedience, including running away from home;
- habitual truancy from school;

- conduct that injures or endangers the minor's, or another's, health or morals; or
- violating a law that applies only to minors (such as a curfew).

Unruly children are also sometimes referred to as *status offenders* because of their status as minors.

A child who is judged unruly may be dealt with in a number of ways. For example, the court may use any of the remedies available for neglected, dependent, or abused children. These dispositions include, among others, placement with parents under conditions designed to ensure proper care, supervision and behavior; or placement in the temporary or permanent custody of a children's services agency or approved private agency; community service work; probation with conditions established by the court; suspension or revocation of the child's driver's license and the registration of any vehicle registered in the child's name.

If the court finds that its original disposition is not effective because the child has not responded to treatment or rehabilitation, the court may use any of the dispositions available for delinquents. Further, if the offense would have been a drug-abuse offense or a "disorderly conduct while intoxicated" offense if it had been committed by an adult, the court may require the child to participate in a drug- or alcohol-abuse counseling program. The court also may suspend or revoke the child's driver's license until he or she turns 18, or successfully completes an approved drug- or alcohol-abuse treatment program.

Juvenile Traffic Offenders

A *juvenile traffic offender* is a child who violates any traffic law or regulation of Ohio or any other state. For any moving violation that occurs before the youth's 18th birthday, the youth is subject to a mandatory minimum driver's license suspension as follows:

- first moving violation before age 18: zero days to two years;
- second moving violation before age 18: three months to two years;

- third moving violation before age 19: one year to two years.

While a youth may be entitled to driving privileges while serving a driver's license suspension, these likely will be limited to work and school. In addition to mandatory license suspensions, the court also may impose one of the penalties listed below, which are generally available in all traffic cases:

- imposition of fines generally ranging from \$50 to \$250 plus court costs;
- suspension or revocation of the child's driver's license or the registrations of any motor vehicles that may be registered in the child's name;
- placement of the child on community control sanctions (such as probation, community service, a drug and alcohol treatment program, a curfew or house arrest);
- requirement that the child make restitution for all or part of the damages caused by the offense; and/or
- placement of the child in the temporary custody of an approved facility, such as a camp or school, for a period of not more than five days, as long as the child was ruled a juvenile traffic offender for committing an offense which, if committed by an adult, would have been "operating a motor vehicle under the influence of alcohol or drugs" or "alcohol and/or drugs."

Neglected, Dependent and Abused Children

Neglected Child

A neglected child is one:

- who has been abandoned;
- who lacks proper care because of the faults or habits of the child's parents, guardian or custodian;
- whose parents, guardian or custodian neglect or refuse to provide proper or necessary subsistence, education, medical or surgical care or

treatment, or other care necessary for the child's health, morals or well-being;

- whose parents, guardian or custodian neglect or refuse to provide the special care required by the child's mental condition;
- whose parents, guardian or custodian illegally gave, or attempted to give, custody of the child to another; or
- who suffers physical or mental injury that harms, or threatens to harm, the child's health or welfare because of the failure of the child's parents, guardian or custodian to perform their duty according to Ohio law.

When a parent, guardian or custodian fails or refuses to provide adequate medical or surgical care or treatment to a child only because of religious belief, the law that defines a neglected child does not consider this a criminal offense. However, the statute dictates that, in such instances, proper authorities must be notified so the state or political subdivision, if necessary, can ensure that the child is given the required medical or surgical care or treatment despite the parents', guardian's or custodian's religious beliefs.

Dependent Child

The concept of *dependency* is similar to that of neglect, except that the dependent child's condition or situation is not, in general, the fault of the parents, guardian or custodian. This kind of dependency should not be confused with "dependents" that are named by parents for tax purposes. A dependent child is one:

- who is homeless, destitute or without proper care or support;
- who lacks proper care or support because of the mental or physical condition of the child's parents, guardian or custodian;
- whose condition or environment is such that the state must assume the guardianship of the child; or
- who is in danger of being abused or neglected because he or she lives in a household where another household member has abused or neglected a child who lives in the household.

Abused Child

An *abused child* is one:

- who is the victim of a criminal sexual offense;
- who is endangered as defined in the criminal law;
- who shows evidence of any intentionally caused physical or mental injury, or is the victim of an injury for which there is no reasonable explanation;
- who suffers physical or mental injury harmful or potentially harmful to the child's health or welfare because of the acts of the parents, guardian or custodian; or
- who is subjected to abuse outside the home.

Offenses that the law considers to be criminal sexual offenses against minors include rape, sexual battery, corruption of a minor and sexual imposition. The person who committed the offense does not have to be convicted before the court can determine that the minor involved in the sexual activity is an abused child; the child can come under the court's protection as soon as the charge is made.

The definition of child abuse also incorporates the criminal offense of endangering children. Under Ohio law, the offense of *child endangerment* covers not only physical abuse, but emotional and psychological abuse as well, and may be committed by:

- a parent, guardian, custodian or person standing in place of a parent—such as a teacher, scoutmaster or babysitter—who places a child in imminent danger of serious harm by violating a duty of care, protection or support;
- anyone who inflicts torture or cruelty, or creates an imminent risk of serious harm to the child by administering excessive physical punishment or restraint in a cruel manner or for prolonged periods, or repeatedly administers unwarranted discipline to the child that, if continued, endangers the child's mental health or development;
- anyone who entices, permits, encourages, compels, employs or allows a minor to participate in any way in the development, advertisement, or presentation of any material or

performance that is obscene, sexually oriented or nudity oriented; or

- anyone who allows, encourages or forces a child to solicit for prostitution, or to engage in prostitution.

Child abuse based on the offense of endangering children is normally a misdemeanor. However, endangerment that results in serious physical harm to the child is a felony. The statutory definition of "serious physical harm" includes mental illness as well as serious physical illness or injury. The offense of child endangerment may be tried in any court having jurisdiction, including juvenile court, but felony cases must be tried in common pleas court. Just as in a sexual abuse case, the person who committed an endangerment offense does not have to be convicted for the juvenile court to determine that the minor child involved is an abused child. A child who has been physically disciplined by a parent, guardian or custodian is not considered abused if child-endangering laws do not forbid the method of discipline. For example, spanking a child does not automatically constitute abuse.

The definition of child abuse also addresses the battered-child syndrome. For example, a child may show physical injury or mental injury that appears to have been intentionally inflicted or is not adequately explained by the child, parent, guardian, custodian or others. Doctors, dentists, nurses or other health-care professionals, child-care professionals, and teachers, attorneys and others commonly in contact with children must report suspected cases of child abuse to law enforcement authorities. Further, Ohio law requires anyone who knows that a felony has been committed to report the basic facts to law enforcement authorities. Because child abuse is a felony, anyone who observes a child suffering from serious injury or illness and has substantial reason to suspect child abuse must report the facts to law enforcement authorities.

The court has multiple options in deciding what to do with a child determined to be dependent, neglected, or abused. The options include, among others:

- placing the child under protective supervision;
- committing the child to the temporary custody of an approved public or private agency, either parent, a relative or a probation officer for further court-approved placement;
- granting legal custody of the child to either parent or another person;
- committing the child to the permanent custody of an approved public or private agency;
- placing the child in long-term foster care with an approved public or private agency; or
- placing restrictions on the child, the child's parents, guardian, custodian or any other person.

Dealing with Adults Contributing to Delinquency or Neglect

Under Ohio law, it is an offense for an adult to contribute to, or encourage in any way, the delinquency, unruliness or neglect of a minor. The juvenile court has jurisdiction to try adults accused of this offense. Typically, "contributing" cases arise when parents fail to take reasonable measures to control their child's delinquent or unruly behavior, or when an adult has sexual relations with a minor or encourages or aids a minor in having sexual relations. Encouraging a minor to frequent bars, brothels or places where drugs are used also may constitute the offense of contributing. Parents who fail to provide their child with food, clothing, shelter, medical attention and education may be charged with contributing, or with non-support of dependents. The foregoing are only some of the possible ways of contributing to the delinquency or neglect of a minor. While many "contributing" cases are handled in juvenile court, non-support cases may be tried in any court having jurisdiction. Further, some non-support cases are felonies and must be tried in the common pleas court.

Divorce and Related Matters

Society wants to protect the unity of the family. Therefore, the courts are interested in preserving marriages when possible. Courts recognize that sometimes relationships between spouses can deteriorate so much that it is best to allow the orderly and fair termination of the marriage or marital relationship. Under Ohio law, a marriage, or marriage relationship, may end through divorce, dissolution of marriage or annulment.

A *legal separation* suspends the duties of spouses to each other, but does not end the marriage. In essence, legal separations allow the husband and wife to live apart from one another once the court determines all of the parties' rights and responsibilities.

Whether a couple seeks a divorce, dissolution of marriage, annulment or legal separation, the domestic relations court terminates the marriage, or marital relationship, and manages the issues of child custody, support, parenting time, spousal support and property division.

Continuing Jurisdiction

In most situations, a case is over once a court makes a decision. In domestic relations cases, the court retains the ability to change orders concerning such matters as custody, parenting time and child support, depending on changes in the family's circumstances. This is referred to as the court's *continuing jurisdiction*. A domestic relations court generally does *not*, however, retain continuing jurisdiction to alter a property division that it has made.

Conciliation

The law requires the common pleas courts to establish a process for hearing *conciliation* cases. In counties where a conciliation court exists, either a husband or wife, or both, may file a petition asking the court to help settle marital controversies. While that action is pending, neither spouse may file or proceed with an action for divorce, annulment or legal separation.

In Ohio, a husband or wife may file a legal action asking that both spouses be ordered to engage in a conciliation process in an effort to save the marriage. Spouses do not use this process often, because most people who are interested in saving their marriage use private methods, such as marriage counseling, before coming to the court.

A second type of conciliation proceeding may be started only after the first publication of the notice of a divorce, annulment or legal separation action or 30 days following the service of a summons. A conciliation proceeding also may be started at any time after the filing of a petition for dissolution of a marriage. The court may order conciliation on its own initiative or based on either spouse's written request (called a *motion*). The court that processes divorces handles this second type of conciliation. The court's conciliation order must detail the process and state how expenses will be paid. If children are involved, the court may require family counseling for a reasonable period of time. If there are no children, the conciliation period cannot exceed 90 days.

The court has wide discretion in specifying the details of the conciliation/family counseling process. The conciliator may be a conciliation judge, a public or private marriage counselor, a family service agency, a community health service, a physician, a psychologist or a clergy person. The underlying action for divorce, annulment or legal separation cannot be heard or decided until the conciliation or family counseling has been completed and the results reported to the court.

Mediation

Mediation is a process in which a neutral third party, the *mediator*, assists the parties in negotiating an agreement on a matter of common interest. Parties sometimes use mediation if they do not agree on parental rights and responsibilities, a specific parenting schedule, the amount of child support, spousal support or property division. If the disputed matters involve parenting issues, the court may order the parties into mediation. Unless otherwise established by local rules, the court's mediation order should outline the mediation process, the qualifications of the mediator, what must be included in the mediation report, if any, and who must pay for the mediation process. A mediation report consists of a statement as to whether the parties have reached an agreement and, if so, what the agreement is. In general, a mediator cannot be called as a witness or named as a party in the underlying proceeding (the divorce, annulment, etc.). Because mediators cannot make orders, and may only guide parties into settlement, mediation is effective only if the parties can reach agreement on the issues to be mediated.

Divorce

The long-recognized, classic way to end a marriage is through *divorce*. In Ohio, a divorce may be granted based on any of 11 separate reasons, or *grounds*. There are grounds for divorce when:

- 1) either party had a spouse living at the time of the marriage from which the divorce is sought (called *bigamy*);
- 2) the other spouse has been willfully or deliberately absent for one year or more;
- 3) the other spouse commits adultery;
- 4) the spouses are incompatible, unless one of the spouses denies that this is true (*incompatibility* is used frequently these days as a final ground for divorce);

- 5) the other spouse practices extreme cruelty;
- 6) the marriage was based on fraud;
- 7) the other spouse grossly neglects his or her duty as a partner to the marriage;
- 8) the other spouse habitually abuses alcohol;
- 9) the other spouse is imprisoned in a penitentiary;
- 10) one spouse gets a divorce outside Ohio (for example, a “quickie” divorce) that ends the marriage itself, but does not resolve issues relating to property division, payment of debt, parenting, support or other issues;
- 11) the spouses have been living apart, continuously and without cohabitation, for one year.

People in divorce cases most often use the grounds of incompatibility, extreme cruelty and gross neglect of duty. *Extreme cruelty* includes both physical and mental cruelty. *Gross neglect of duty* takes in a wide range of unacceptable conduct by a husband or wife. Typical examples are the failure of a spouse to contribute to support of the family or the failure of a spouse to meet his or her obligations to the family unit. *Incompatibility* recently has been added as a ground for divorce, but its use is growing among couples that agree the marriage should end, but cannot agree on the terms. Couples who do not wish to make public a more offensive ground for divorce also may use incompatibility.

Dissolution of Marriage

Dissolution is a substantial departure from the traditional concept of divorce. In a dissolution, the parties agree to end the marriage. They also agree, before filing any papers, to property division, payment of debts, allocation of parental rights and responsibilities and child and/or spousal support, and other such matters. In dissolution cases, the parties do not have to allege or prove any grounds for divorce. To obtain the court’s approval for a dissolution, the husband and wife must enter into a separation agreement that both parties sign and that is attached to the request for dissolution.

When the court reviews the separation agreement and the dissolution request, it is concerned that the separation agreement is fair to both parties and that the agreement makes appropriate provisions for any children. If the court approves the separation agreement and the dissolution request, it issues an order dissolving the marriage.

Annulment

While divorce and dissolution end a valid marriage, *annulment* declares that a marriage was illegal in the first place. In Ohio, there are grounds for annulment when:

- 1) the party seeking the annulment was under age at the time of the marriage;
- 2) a former marriage of either party was and still is valid (bigamy);
- 3) either party was mentally incompetent;
- 4) the consent of either party to the marriage was obtained by fraud;
- 5) the consent of either party was obtained by force; and
- 6) even though the marriage was otherwise valid, the parties never consummated the marriage (engaged in sexual relations as husband and wife).

Bigamy is the only ground that makes the marriage void (invalid from the start). The other grounds must be asserted within a specified time. Further, grounds one, three, four, and five (above) are lost if the parties live together after the party who was underage reaches age 18; the party who was incompetent regains competence; the fraud by which consent was obtained was discovered; or force was used to obtain consent. In an annulment action, just as in a divorce action, the court can award temporary spousal support and can make an order concerning custody, care, maintenance and education of any children. Permanent child custody and support may be granted and an annulment does not affect the legitimacy of children.

Legal Separation

When a court grants a *legal separation*, a couple remains legally married, but most aspects of the marital relationship are terminated. In this action, the court will settle all property rights existing between the couple, address custody issues and may resolve all other issues relating to the marriage, including spousal support and child support issues. If spousal support and child support are granted, the court may enforce the support payment as if it had been granted in a divorce action. The grounds for legal separation are virtually the same as the grounds for divorce with one exception: “Procurement of a divorce outside Ohio,” a ground for divorce, is not a ground for legal separation.

Even if one spouse files for legal separation, the other spouse still may seek a divorce or annulment. Once a legal separation has been granted, there is nothing in the law that prevents either spouse from seeking a divorce or annulment.

Property Division and Spousal Support

Ohio statutes define how property is divided when a marriage is terminated. *Marital property* is property acquired during the marriage, including real estate, personal property or intangible property such as stocks and bonds, bank accounts and retirement plans. Marital property also may include increases in the value of separate property due to either spouse’s work effort, labor or contribution of marital money that helped to increase the property’s value. Separate property is property owned by only one of the spouses, and includes:

- all real, personal and intangible property from an inheritance;
- property owned before the marriage;
- income or appreciation from separate property that did not come from the labor or substantial effort of either party during the marriage;
- a gift after the marriage date that is proved to be made to only one spouse; and
- an award for personal injury, except any part

of the award that compensates for lost wages occurring during the marriage, or medical bills from the injury paid with marital funds.

By applying the rules in the statute as well as appropriate case law, the court determines what is and what is not marital property. The marital property is to be divided equally, unless the court explains in writing why an equal division would not be fair. In making the award, the court must apply the eight specific factors listed in the statute and any other factor it finds relevant and equitable. The eight statutory factors are:

- the duration of the marriage;
- the assets and liabilities of husband and wife;
- whether it is appropriate to award the family home (or the right to live there for a certain period of time) to the spouse who will have principal custody of the children;
- whether the property can be easily converted into cash, if necessary (*liquidity*);
- whether it would destroy the value of a certain type of asset (such as a set of fine china) to divide it;
- the tax consequences of the division;
- the cost of sale of any asset that has to be sold—such as real estate commissions, advertising, etc.; and
- any agreement that the parties might have reached between themselves.

The court also has the authority to make a distributive award from separate property of either party to the other to achieve equity between the parties. When a party has engaged in financial misconduct such as hiding property, dissipating money or funds or disposing of funds fraudulently, the court may make an award out of the separate property of the offending spouse or make a greater award of marital property to compensate the other party.

In determining whether spousal support (formerly called *alimony*) is appropriate and reasonable, and in determining the amount, terms of payment and duration of spousal support, the court must consider the following factors:

- income and relative earning abilities of the parties;

- ages and physical, mental and emotional conditions of the parties;
- retirement benefits of the parties;
- length of the marriage;
- standard of living established during the marriage;
- extent to which it would be inappropriate for the custodian of a child to seek work outside the home;
- educational background of the parties;
- property and debts of the parties, including any court-ordered payments;
- contribution of each party to the education, training or earning ability of the other;
- time and expense needed for the person seeking spousal support to acquire education, training or job experience;
- lost income production capacity of either party resulting from that party's marriage responsibilities; or
- tax consequences for each party of an award of spousal support.

The court may also consider any other factor that it finds to be relevant and fair.

Parental Rights and Responsibilities (Child Custody) and Child Support

When a couple is married and living together, both share parenting responsibilities equally. In the eyes of the law, both have equal authority to make decisions concerning the care, discipline and support of their children. When the court terminates a marriage, one spouse will have primary responsibility over the children unless a court orders shared parenting. The parent with primary responsibility is called the *residential parent* and the other parent is called the *non-residential parent*. If the couple cannot agree who will be the residential parent or upon a parenting time schedule, the court will decide for them or require them to mediate the issue under the procedures adopted by the court. (*See "Mediation" on page 142.*)

Shared parenting involves a plan where the parents both have a role in making decisions for their children. Although the parents sometimes

share parenting time equally, most often one parent has physical custody of the children more often than the other, even when the parties have shared parenting. Both parents or either parent may request shared parenting. If only one of the parents wants shared parenting, a good shared parenting plan is difficult to achieve. Although the parties do not have to agree on shared parenting, if the parents cannot cooperate, the courts frequently reject the shared parenting plan and determine childcare arrangements based on the child's best interests.

When a court decides a custody issue, its primary focus is, "What is in the best interests of the child?" The court must decide whether, under all circumstances, it would be in the child's best interests to be placed with the father or with the mother; or whether a shared parenting arrangement would be more appropriate. When trying to decide the best interests of a child, the court must consider all relevant factors including the various guidelines specified in state law.

State law instructs the courts to consider, in determining the best interests of a child for custody purposes:

- the parents' wishes;
- the child's wishes;
- the child's interaction with parents, siblings and others who significantly affect the child;
- the child's adjustment to home, school and community;
- the mental and physical health of all concerned;
- which parent will promote court-ordered time between the child and the other parent;
- whether a parent has made court-ordered support payments;
- whether a parent has been convicted of abuse, neglect or domestic violence;
- whether a parent has purposely denied the other parent court-ordered time with the child; and
- whether a parent has moved or plans to move from the state.

While a child's wish about custody is one of the factors used to determine the best interests of a child, Ohio law forbids people from trying to get any type of statement from the child setting forth

the child's wishes and concerns regarding parental rights and responsibilities. If a person does obtain such a statement, the court will not consider it. Nevertheless, a court may interview the child (usually in private) to determine the child's wishes and concerns about custody. While the court considers the child's preference, the court determines how the child will be cared for based on what will be best for the child.

When custody is granted to one parent, *parenting time* (formerly called *visitation*, a term that now applies to grandparents' rights) is normally granted to the non-residential parent. Each court is required to adopt standard guidelines to decide parenting time issues, but individual situations (such as one parent who travels for a living) may dictate a non-standard parenting time schedule.

Under Ohio law, a husband and wife are equally charged with providing for their children's care, welfare and education. The obligation of both parents to support their children normally continues until each child turns 18, or as long as the child attends high school on a full-time basis until the child reaches the age of 19. The obligation can end earlier if the child marries, joins the armed forces or leaves home and becomes self-supporting. It can also be extended in a separation agreement, by court order, or if the child is disabled.

To help courts and parents decide how much support a child needs, the Ohio General Assembly has established the Ohio Child Support Guidelines. Ohio courts use these guidelines, along with other factors spelled out in state law to help establish or modify child support. Under the Ohio Child Support Guidelines, a parent can calculate the amount of child support that he or she should pay, given all the factors the law requires the court to consider, by filling out a child support worksheet. Courts require parents involved in domestic

relations matters to complete and file such worksheets. The amount determined by the worksheet is presumed to be correct unless certain limited *deviation factors* (such as extraordinary medical expenses or support of other children) can be proven, or unless the parents agree to modify the amount based on one of these factors.

Visitation Rights of Grandparents and Other Persons

In general, a court will not interfere with an intact family to settle disagreements about the right to see or visit a child. For example, a court will not become involved in a conflict between parents and grandparents (mother, father-in-law, mother-in-law, etc.) if a parent refuses to let a grandparent see the minor grandchildren. However, the court may grant reasonable companionship or visitation with minor children to grandparents, relatives, or other persons if:

- there is a pending divorce, dissolution, legal separation, annulment or child-support proceeding;
- the court has continuing jurisdiction over the proceedings listed above;
- a parent has died and left a minor child;
- an unmarried woman has a minor child; or
- a father, who is not married to his child's mother, either has acknowledged paternity or has been found to be the father of the child.

In determining whether to grant any of the above requests for companionship or visitation, the court considers all relevant factors. The best interests of the child is the paramount factor, but the court also considers, among other things, blood and social relationships, interactions, geographical location and distance, the character of the requester, the availability of parents and schedules.

Chapter Summary

- Recognizing the importance of the family, the law establishes rights and duties for family members (generally parents and their children) and a way to enforce these rights and duties.
- The rights and duties of the people involved in the family and the process of enforcing these rights and duties are often grouped together under the term *family law*.
- *Marriage* is a three-way contract involving the state and the two people who are joined in marriage. A couple's marriage vows create a *binding contract*.
- The law states that only males 18 years old and females 16 years old may enter into marriage.
- A marriage cannot be *solemnized* (that is, completed by means of a marriage ceremony) unless the parties have a license. A license is obtained by applying in the probate court of the county where either party lives, or in the county where the ceremony is to be performed.
- Ohio law establishes a variety of rights and duties for married couples concerning their relations with one another and with their children. Similarly, the law establishes a variety of rights and duties for children concerning their relations with their parents.
- The age at which a child (minor or juvenile) becomes an adult is known as the *age of majority*. Under federal law, every citizen is allowed to vote at age 18. In Ohio, 18 is the age of majority for voting and most other purposes.
- Under the law, minors are treated differently from adults in many situations, chiefly to protect both minors and society from the minors' lack of experience, skill and judgment.
- In Ohio, the juvenile court has jurisdiction over minors who commit offenses or present behavioral problems. The court also has jurisdiction over neglected and dependent children, and it has a wide range of options in dealing with children.
- In 1902, Ohio became the fifth state to create a juvenile court. Before the juvenile court existed, children as young as age seven were considered criminally responsible and, if convicted, were treated as adult offenders.
- A *delinquent child* is one who commits any act (other than a juvenile traffic offense) that would be a crime under state, municipal or federal law if committed by an adult, or who fails to obey an order of a juvenile court.
- The juvenile court may transfer a minor to the common pleas court for trial and punishment as an adult in serious cases and under limited circumstances.
- A *juvenile traffic offender* is a child who violates any state, municipal or other law or regulation governing motor vehicle use.
- Ohio law defines and addresses matters involving neglected, dependent and has a number of options for dealing with a child determined to be dependent, neglected, or abused.

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Chapter Summary *continued*

- Under Ohio law, the marriage, or marriage relationship, may be ended through divorce, dissolution of marriage (or dissolution), or annulment. A legal separation suspends the duties of spouses to each other but does not end the marriage.
- The domestic relations court is interested in preserving marriages when possible. When that is not possible, the court is concerned with the orderly and fair termination of the marriage relationship and with the associated questions of parenting time, visitation, child and spousal support and division of property.
- When a couple is married and living together, both partners have equal custody of their children. When the court terminates a marriage, one spouse will have primary responsibility over the children unless a court finds that circumstances are appropriate for the success of shared parenting, which is the favored approach to rearing children.

Web Links:

OSBA's "Law You Can Use" articles:

(go to <http://www.ohioabar.org/pub/lycu> and search for article by title or by topic)

- “Adoptions Raise ‘Right to Know’ Questions”
- “At the Crossroads of Grandparent Visitation”
- “Child Support: How Is It Enforced?”
- “Children’s Wishes Are Considered in Custody Matters”
- “Collaborative Family Law Promotes Divorce with Dignity”
- “Commonly Asked Questions about Divorce”
- “Court Considers Many Factors in Determining Spousal Support”
- “Divorce and Dissolution: What’s the Difference?”
- “Divorce Decrees Enforced in Several Ways”
- “Guns at Home Can Make Parents Liable for Child’s Criminal Actions”
- “How Do Courts Determine Child Support?”
- “How Does a Legal Separation Differ from a Divorce or Dissolution?”
- “How To Select and Interview Your Divorce Lawyer”
- “Insurance May Cover Medical Expenses in Adoption Cases”
- “Know What the Law Says about Artificial Reproduction Technology”
- “Law Requires Parental Consent for Treatment of Minors”
- “Marriages Are Annulled in Special Cases”
- “Ohio Law Allows Attorney-Arranged Adoptions”

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Web Links *continued*

OSBA's "Law You Can Use" articles:

(go to <http://www.ohioabar.org/pub/lycu> and search for article by title or by topic)

- "Parents May Be Liable for Child's Actions"
- "Parents May Network To Find Child Available for Adoption"
- "Pending Divorce Does Not Change Marital Status for Income Tax Filing"
- "Probate Court Screens Prospective Parents in Private Adoptions"
- "Step-Parent Adoption is Permanent"
- "What Birth Parents Should Know about Adoption Process"
- "What Rights Do Grandparents Have after Divorce?"
- "What You Should Know about Grandparent Adoption in Ohio"
- "Working with your Divorce Lawyer Can Save You Money and Enhance Your Settlement"

OSBA's "LawFacts" pamphlets:

(go to <http://www.ohioabar.org/pub/lawfacts/> and search by title)

- "Divorce Mediation"
- "Divorce, Dissolution & Separation"
- "Ohio's Marriage Laws"
- "Sharing Parental Responsibilities After Separation"

From Nolo.com:

<http://www.nolo.com/>

Click on "Family Law and Immigration" tab

From Cornell Law School Legal Information Institute:

(Family law topics are alphabetically listed.)

http://www.law.cornell.edu/wex/index.php/Category:Family_Law