

## CHANGE OF CUSTODY FACT SHEET

A court cannot change custody from you to the other parent unless certain requirements of Ohio law, Revised Code Section 3109.04, are met. The court must review certain facts in deciding whether to change custody.

The court must decide if there has been a “change of circumstances” of the child or the custodial parent (or a parent in shared parenting plan). The change of circumstance must have occurred after the last custody decree. (Issues the court has heard and decided cannot be raised again.) Such issues might include the mental instability of the custodial parent, frequent changes of residence, abuse or neglect of the child or his education or substance abuse. Other issues may be considered. However, the situation must have a direct, adverse impact on the child. Frequently, a parent seeking custody will try to combine a series of minor events or situations to show that there has been a detrimental change in circumstance.

Once the court finds that a “change of circumstances” has occurred, the court must determine if:

- a) the present custodian has agreed to the change of custody;
- b) the child has been placed in the other parent’s home by the custodial parent and is integrated into that home; or
- c) the harm likely to be caused by such a change of environment is outweighed by the benefit of placing the child in the other home.

Ohio law creates a presumption in favor of retaining the present custodian; however, sufficient evidence can rebut this presumption. The court must consider the following factors in deciding what is in the child’s “best interest”:

- 1) the wishes of each parent;
- 2) the wishes and concerns of the child;
- 3) the child’s interaction with the parents, siblings, and other people who impact the child (neighbors, friends, teachers);
- 4) the child’s adjustment to the home, school and community;
- 5) the mental and physical health of all persons involved;
- 6) the parent most likely to honor and facilitate visitation;
- 7) whether a parent has failed to make ongoing child support payments;
- 8) whether the custodial parent has willfully denied visitation to the other parent;
- 9) whether either parent is planning to establish a residence out of state; and
- 10) whether either parent has abused children or been a perpetrator of domestic violence.

Any child who is mature may state an opinion as to who should be the legal custodian. The child’s wishes are one of many factors in deciding what is in the child’s “best interest.” The court is permitted by statute to interview a child in chambers (privately) if either parent requests such an interview.

You may ask the court to appoint a guardian ad litem (GAL). A GAL will investigate and report to the court. The GAL will talk with parents, teachers, counselors and others and review records. The GAL also will talk with the child. You should cooperate with the guardian ad litem who has been appointed on the case. You should provide the names and telephone numbers for your child’s teachers (last year and this), counselors, pediatrician, and others who may have knowledge of your child’s needs and environment.