

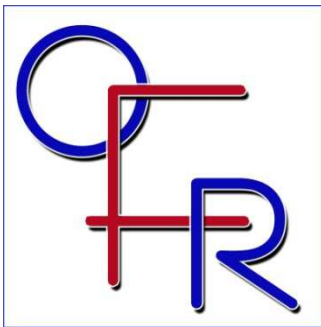


Ohio and the Presumption of Equal Custody

Ohio Family Rights breaks down the ORC on presumptions.

[In PDF format](#)

3/01/2018



While some are saying that Ohio needs to add a Presumption of Equal custody; those calls as false and misleading. These claims and push to place redundant laws on the books fail to address the numerous problems that do exist within the current statutes and will only serve to slow the efforts to correct the flaws.

Ohio already has a presumption of equal custody and it appears in multiple places within the Ohio Revised Code.

3109.03 Equality of parental rights and responsibilities.

When husband and wife are living separate and apart from each other, or are divorced, and the question as to the parental rights and responsibilities for the care of their children and the place of residence and legal custodian of their children is brought before a court of competent jurisdiction, they shall stand upon an equality as to the parental rights and responsibilities for the care of their children and the place of residence and legal custodian of their children, so far as parenthood is involved.

Going further, we must also look at stated public policy which further backs up and presents that there exists a presumption already in existence.

3109.401 State policy on parent and child relationship.

(A) The general assembly finds the following:

(1) That the parent and child relationship is of fundamental importance to the welfare of a child, and that the relationship between a child and each parent should be fostered unless inconsistent with the child's best interests;

(2) That parents have the responsibility to make decisions and perform other parenting functions necessary for the care and growth of their children;

(3) That the courts, when allocating parenting functions and responsibilities with respect to the child in a divorce, dissolution of marriage, legal separation, annulment, or any other proceeding addressing the allocation of parental rights and responsibilities, must determine the child's best interests;

(4) That the courts and parents must take into consideration the following general principles when allocating parental rights and responsibilities and developing appropriate terms for parenting plans:

(a) Children are served by a parenting arrangement that best provides for a child's safety, emotional growth, health, stability, and physical care.

(b) Exposure of the child to harmful parental conflict should be minimized as much as possible.

(c) Whenever appropriate, parents should be encouraged to meet their responsibilities to their children through agreements rather than by relying on judicial intervention.

(d) When a parenting plan provides for mutual decision-making responsibility by the parents but they are unable to make decisions mutually, they should make a good faith effort to utilize the mediation process as required by the parenting plan.

(e) In apportioning between the parents the daily physical living arrangements of the child and the child's location during legal and school holidays, vacations, and days of special importance, a court should not impose any type of standard schedule unless a standard schedule meets the needs of the child better than any proposed alternative parenting plan.

(B) It is, therefore, the purpose of this chapter, when it is in the child's best interest, to foster the relationship between the child and each parent when a court allocates parental rights and responsibilities with respect to the child in a divorce, dissolution, legal separation, annulment, or any other proceeding addressing the allocation of parental rights and responsibilities.

Even the ORC 3109.042 which covers the custody rights of the unmarried mother contains a presumption of equality between both mother and father in all proceedings.

3109.042 Custody rights of unmarried mother.

(A) 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) Notwithstanding division (A) of this section, an unmarried female who has been convicted of or pleaded guilty to rape or sexual battery and has been declared under section 3109.501 of the Revised Code to be the parent of a child born as a result of rape or sexual battery shall not be a residential parent and legal custodian of that child.

3111.01 Parent and child relationship defined.

(A) As used in sections 3111.01 to 3111.85 of the Revised Code, "parent and child relationship" means the legal relationship that exists between a child and the child's natural or adoptive parents and upon which those sections and any other provision of the Revised Code confer or impose rights, privileges, duties, and obligations. The "parent and child relationship" includes the mother and child relationship and the father and child relationship.

(B) The parent and child relationship extends equally to all children and all parents, regardless of the marital status of the parents.

Additional claims that by adding the word "rebuttable" makes more this more effective or automatically conveys equal rights is false or misleading.

If you read Blacks Law's definition of a presumption of law makes it clear that a presumption is nothing more than an assumption.

Legal Dictionary goes a bit further in explaining:

Rebuttable Presumption

A conclusion as to the existence or nonexistence of a fact that a judge or jury must draw when certain evidence has been introduced and admitted as true in a lawsuit but that can be contradicted by evidence to the contrary.

A rebuttable presumption can be overturned only if the evidence contradicting it is true and if a reasonable person of average intelligence could logically conclude from the evidence that the presumption is no longer valid. For example, a person who has been judicially declared incompetent is presumed incompetent unless there is sufficient proof, usually in the form of medical testimony, that the person has regained competency.

In [Criminal Law](#), there is a [Presumption of innocence](#) in favor of the accused. The prosecution must establish [Beyond a Reasonable Doubt](#) that the accused committed the crime charged.

rebuttable presumption

n. **since a presumption is an assumption of fact accepted by the court until disproved, all presumptions are rebuttable.** Thus rebuttable presumption is a redundancy. (See: [presumption](#))

The problem has never been with the presumption; it is in the factors and the lack of a proper evidentiary standard. Until that is changed, nothing else with change.

Ray R. Lautenschlager
Legislative Director
Ohio Family Rights
www.ohiofamilyrights.com

