



THE SUPREME COURT *of* OHIO

Domestic Violence & Allocation of Parental Rights and Responsibilities

COURT GUIDE





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About This Guide

Each case that involves an allocation of parental rights and responsibilities presents a unique set of circumstances, i.e., strengths and challenges in the family. The Domestic Violence & Allocation of Parental Rights and Responsibilities Court Guide is a tool for courts to consider domestic violence-related information and assess its impact in light of risk, statutory best interest factors, and appropriate parenting time arrangements.

The Guide is organized into three interrelated areas to help the court determine:

- **Evidence-Based Lethality or Risk Factors:** How do dangerousness factors impact the allocation of parental rights and responsibilities?
- **Statutory Best Interest Factors:** How do domestic violence acts relate to the statutory best interest factors?
- **Parenting Plan Continuum:** How does the presence of domestic violence impact meaningful allocation of parental rights and responsibilities and enforcement of the parenting time arrangements?

Although this Guide emphasizes lethality factors to indicate a heightened level of risk, bear in mind that that risk is not static and other forms of domestic violence abuse, including but not limited to, coercive control of the victim and the child's experiences relative to the violence, may also affect a child's safety and well-being. Additionally, this Guide is not exhaustive or designed to be a substitute for the court's discretion in determining the credibility of the allegations and weight of each factor. It is not a domestic violence screening or information collection tool – and should not be used for either of those purposes. Therefore, the Guide should not be filled out, scored in any way, or placed in any court file. The Guide is meant to bring to the forefront the intersection of lethality or risk factors and statutory best interest factors to help courts craft parenting time orders that maximize safety and well-being of the child and the parents.

For sample screening and assessment protocols, see Battered Women Justice Project's Initial Domestic Abuse Screening Guide, Domestic Abuse Interview Guide, or Parenting Charts, which are available at www.bwjp.org/resource-center/resource-results/practice-guides-for-family-court-decision-making-in-domestic-abuse-related-child-custody-matters.html.

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Lethality or Risk Factors

Abuse during Pregnancy
 Access to Firearms and Other Weapons
 Alleged Perpetrator's Mental State
 Animal Abuse
 Avoidance of Consequences

Child Abuse
 Controlling Behaviors
 Escalating or Changing Violence
 Jealous or Obsessed

Sexual Assault
 Stalking
 Strangulation
 Threats to Kill

Best Interest Factors for Residential Parent/Custodial, Shared Parenting or Companionship

Parents' Wishes
 R.C. 3109.04(F)(1)(a)
 or R.C. 3109.051(D)(15)

Child's Interaction and Interrelationship
 R.C. 3109.04(F)(1)(c)
 or R.C. 3109.051(D)(1)

Parties' Mental and Physical Health
 R.C. 3109.04(F)(1)(e)
 or R.C. 3109.051(D)(9)

Continuous and Willful Denial of Parenting Time
 R.C. 3109.04(F)(1)(i)
 or R.C. 3109.051(D)(13)

Child's Wishes and Concerns
 R.C. 3109.04(F)(1)(b)
 or R.C. 3109.051(D)(6)

Child's Adjustment to Home, School and Community
 R.C. 3109.04(F)(1)(d)
 or R.C. 3109.051(D)(5)

Conviction for Enumerated Offenses
 R.C. 3109.04(F)(1)(h)
 or R.C. 3109.051(D)(11)
 R.C. 3109.051(D)(12)

Established or Planning Residence Outside Ohio
 R.C. 3109.04(F)(1)(j)
 or R.C. 3109.051(D)(14)

If Designating Residential Parent/ Legal Custodian or Granting Shared Parenting, Also Consider These Best Interest Factors

Parent More Likely to Honor and Facilitate Parenting Time
 R.C. 3109.04(F)(1)(f)

Child Support Payments
 R.C. 3109.04(F)(1)(g)

If Shared Parenting, Also Consider These Best Interest Factors

Parents' Ability to Cooperate and Make Decisions Jointly
 R.C. 3109.04(F)(2)(a)

Parents' Ability to Encourage Love, Affection and Contact
 R.C. 3109.04(F)(2)(b)

History of or Potential for Abuse, Domestic Violence, or Parental Kidnapping
 R.C. 3109.04(F)(2)(c)

Parents' Geographic Proximity
 R.C. 3109.04(F)(2)(d)

GAL's Recommendation
 R.C. 3109.04(F)(2)(e)

If Granting Companionship, Also Consider These Best Interest Factors

Parents' Geographic Proximity
 R.C. 3109.051(D)(2)

Parents' Available Time
 R.C. 3109.051(D)(3)

Child's Age
 R.C. 3109.051(D)(4)

Child's Health and Safety
 R.C. 3109.051(D)(7)

Time to Spend with Siblings
 R.C. 3109.051(D)(8)

Willingness to Reschedule Missed Visitation
 R.C. 3109.051(D)(10)

Other
 R.C. 3109.051(D)(16)

If conviction AND designating residential parent **OR** shared parenting court **MUST** consider R.C. 3109.04(C).

Parenting Plan Continuum

- ↑ Shared Parenting – Co-Parenting (Parents Make Decisions Jointly)
- Shared Parenting – Parallel Parenting (Each Parent Has Separate & Specific Responsibilities)
- Unsupervised Parenting Time With or Without Supervised Exchanges
- Supervised Parenting Time
- ↓ Suspended Contact

Lethality or Risk Factors

Danger factors impact the allocation of parental rights and responsibilities. Exposure to these types of violence is likely to result in higher levels of trauma for the child and non-offending parent. The factors noted below are evidence-based, provide an indicia of how past or ongoing domestic violence heighten risks of harm to the child and parents, and may indicate a marked risk for future serious injury or homicide. **These factors should not be scored, as the presence of only one may indicate a higher risk of lethality.**

	Possible Danger Indicators
Abuse during Pregnancy	<ul style="list-style-type: none"> Committed violence against other parent while that parent was pregnant
Access to Firearms or Other Weapons	<ul style="list-style-type: none"> Own or has access to firearms Recently acquired a firearm or ammunition Used or threatened to use a weapon on the other parent
Alleged Perpetrator's Mental State	<ul style="list-style-type: none"> Alleged offending parent has shown signs of depression, such as sleep disturbance, irritability, moodiness, or threatening or attempting suicide Alleged offending parent abuses alcohol or other drugs Alleged offending parent is dependent upon or contemptuous of the other parent
Animal Abuse	<ul style="list-style-type: none"> Parent has abused or killed the family pet or companion animal
Avoidance of Consequences	<ul style="list-style-type: none"> Alleged offending parent avoided significant consequences despite contact with justice system
Child Abuse	<ul style="list-style-type: none"> Physical abuse or sexual abuse allegations of the child Kidnapped or threatened to kidnap the child Child was endangered during the domestic violence acts
Controlling Behaviors	<ul style="list-style-type: none"> One parent controlled or attempted to control the other parent's daily activities One parent imposed rules the other parent had to follow
Escalating or Changing Violence	<ul style="list-style-type: none"> Over time violence escalated in frequency or severity Reported change in the violence, including unusual or odd characteristics Violence is harder to predict
Jealous or Obsessed	<ul style="list-style-type: none"> Parent is highly jealous, obsessed with, or suspicious of the other parent
Sexual Assault	<ul style="list-style-type: none"> Coerced or forced the other parent to engage in unwanted sexual contact
Stalking	<ul style="list-style-type: none"> Repeatedly contacted, stalked, followed, or monitored the other parent's activities through technology, child, or third party Sent unwanted gifts to the other parent
Strangulation	<ul style="list-style-type: none"> One parent has strangled, choked, or suffocated the other parent or has placed his/her hands around the other parent's neck
Threats to Kill	<ul style="list-style-type: none"> Threatened or attempted to kill the other parent or child Stated he/she could not live without the other parent or child Threats included details about the act or aftermath

Best Interest Factors for Custodial Rights

The nature, frequency, and severity of the violence provide context regarding the impact of domestic violence in the allocation of parental rights and responsibilities, particularly if issues of child maltreatment or abuse are raised, and are determining criteria in the statutory best interest factors' analysis.

	Domestic Violence Indicators & Considerations
Wishes of the child's parents R.C. 3109.04 (F)(1)(a)	<ul style="list-style-type: none"> • Parent's fears or concerns about child's safety and well-being • Child's safety and well-being if court follows parent's wishes
Wishes and concerns of the child R.C. 3109.04 (F)(1)(b)	<ul style="list-style-type: none"> • Child's fears or concerns based on frequency or severity of violence • Extent to which child was exposed to the abuse • Effect of abuse on the child's daily life • Child's ability to cope, self-protect, or report concerns
Child's interaction and interrelationship with parents, siblings, and other persons R.C. 3109.04 (F)(1)(c)	<ul style="list-style-type: none"> • Child's direct or indirect exposure to abuse of one parent by the other parent • Physical, sexual, or emotional abuse toward the child • Interference with the other parent's authority • Use of child to monitor or manipulate the other parent • Isolate child from friends, family, or social activities • Changes in parent's or child's behaviors • Neglect of child during parenting time
Child's adjustment to the child's home, school, and community R.C. 3109.04 (F)(1)(d)	<ul style="list-style-type: none"> • Effect of abuse on child's home, school, and social life • Parent isolates the child from or interferes with child's daily activities • Continued exposure to abuse or stalking • Child's ability to self-protect or report concerns • Parent's or child's protective factors, e.g., resiliency, social connections, and concrete network of support in times of need
Mental and physical health of all persons R.C. 3109.04 (F)(1)(e)	<ul style="list-style-type: none"> • Impact of abuse, including trauma, on mental and physical well-being of child and parent • Impact of parent's mental and physical health on safety and well-being of child and other parent • Willingness to participate in or seek treatment for self and child • Interference with or resistance to treatment of child and other parent • Increased risk of harm due to child's physical or developmental disability
Parent more likely to honor and facilitate court-approved parenting time R.C. 3109.04 (F)(1)(f) & Continuously and willfully denied the other parent's right to parenting time R.C. 3109.04 (F)(1)(i)	<ul style="list-style-type: none"> • History of abuse or ongoing threats to harm or kidnap the child • Unwillingness to facilitate, resistance to, or denial of parenting time due to concerns for child's safety or impact of trauma on child • Child independently resists parenting time due to trauma or fear
Failure of child support payments R.C. 3109.04 (F)(1)(g)	<ul style="list-style-type: none"> • Indication of economic abuse • Impact of withholding resources on child's daily life

Best Interest Factors for Custodial Rights - CONTINUED

	Domestic Violence Indicators & Considerations
<p>Convicted of or pleaded guilty to child abuse or neglect, domestic violence, sexually oriented offense, or any offense involving a family or household member; whether there is reason to believe the person acted in a manner that resulted in child abuse or neglect R.C. 3109.04 (F)(1)(h)</p>	<ul style="list-style-type: none"> • Impact of domestic violence and other crimes on child and parents • Context and impact of domestic violence and other crimes on child and parent, including, crimes of violence (R.C. 2901.01); disorderly conduct (R.C. 2917.11); criminal mischief (R.C. 2909.07), or criminal damaging or endangering (R.C. 2909.06) • Potential of abusive or neglectful behavior to child • Potential of convicted parent to recidivate or rehabilitate • See R.C. 3109.04(C)
<p>Parent established a residence, or is planning to establish a residence outside this state R.C. 3109.04 (F)(1)(j)</p>	<ul style="list-style-type: none"> • Relocation motivated by safety considerations • Child's safety and well-being relative to relocation • Child's and parent's basic needs relative to relocation • Threats to harm or kidnap the child

Best Interest Factors for Shared Parenting

Also Consider R.C. 3109.04(F)(1)

	Domestic Violence Indicators & Considerations
<p>Ability of the parents to cooperate and make decisions jointly R.C. 3109.04 (F)(2)(a)</p>	<ul style="list-style-type: none"> • Power imbalance in communication between parents • Nature and tenor of communication • Ability of both parents to assert decision-making authority • Manner of resolving conflicts • Focus of communication between parents relates to the child • Ongoing threats, abuse, or coercive control
<p>Ability of each parent to encourage the sharing of love, affection, and contact between the child and the other parent R.C. 3109.04 (F)(2)(b)</p>	<ul style="list-style-type: none"> • Manipulation of child's attitude toward other parent • Manner in which parents communicate with each other, particularly in the child's presence • Parent supports or undermines the parenting authority of the other parent • Child's ability to contact other parent during parenting time • Safety concerns inhibit parent's ability to encourage love and affection for other parent
<p>Any history of, or potential for, child abuse, spouse abuse, other domestic violence, or parental kidnapping R.C. 3109.04 (F)(2)(c)</p>	<ul style="list-style-type: none"> • Impact of abuse on the child and other parent • Lack of police report, protection order, conviction, or other extrinsic evidence may not disprove allegation of domestic violence • Evidence of reaching out for or accessing services
<p>Geographic proximity of the parents R.C. 3109.04 (F)(2)(d)</p>	<ul style="list-style-type: none"> • Motivation for moving closer to or farther away from the other parent
<p>Recommendation of the guardian ad litem R.C. 3109.04 (F)(2)(e)</p>	<ul style="list-style-type: none"> • Report assesses risks, fears, and effect of domestic violence on child and parent • Threats and safety concerns taken into account in the report • Discussion in report about how child's wishes differ from GAL's or other professional's recommendations • Training, experience, and expertise of GALs rendering opinions on domestic violence or other relevant issues, e.g., sexual assault and child abuse

Best Interest Factors for Companionship Rights

The nature, frequency, and severity of the violence provide context regarding the impact of domestic violence in the allocation of parental rights and responsibilities, particularly if issues of child maltreatment or abuse are raised, and are determining criteria in the statutory best interest factors' analysis.

	Domestic Violence Indicators & Considerations
Child's interaction and interrelationship with parents, siblings, and other persons R.C. 3109.051 (D)(1)	<ul style="list-style-type: none"> • Child's direct or indirect exposure to abuse of one parent by the other parent • Physical, sexual, or emotional abuse toward the child • Interference with the other parent's authority • Use of the child to monitor or manipulate the other parent • Isolate the child from friends, family, or social activities • Changes in parent's or child's behaviors • Neglect of child during parenting time
Geographical location of the residence of each parent R.C. 3109.051 (D)(2)	<ul style="list-style-type: none"> • Motivation for moving closer to or farther away from the other parent
Child's and parents' available time R.C. 3109.051 (D)(3)	<ul style="list-style-type: none"> • Non-custodial parent's interference with established parenting time schedule • Non-custodial parent demands parenting time when it is most disruptive • Non-custodial parent seeks erratic or unscheduled parenting time to force unwanted contact with other parent
Age of the child R.C. 3109.051 (D)(4)	<ul style="list-style-type: none"> • Child's ability to self-protect or report concerns • See <i>Planning for Parenting Time – Ohio's Guide for Parent Living Apart</i>, Supreme Court of Ohio (2012)
Child's adjustment to home, school, and community R.C. 3109.051 (D)(5)	<ul style="list-style-type: none"> • Effect of abuse on child's home, school, and social life • Parent isolates the child from or interferes with the child's daily activities • Continued exposure to abuse or stalking • Child's ability to self-protect or report concerns • Child's or non-custodial parent's protective factors, e.g., resiliency, social connections, and solid network of support in times of need
Wishes and concerns of the child R.C. 3109.051 (D)(6)	<ul style="list-style-type: none"> • Child's fears or concerns based on frequency or severity of violence • Extent to which child was exposed to the abuse • Effect of abuse on the child's daily life • Child's ability to cope, self-protect, or report concerns
Health and safety of the child R.C. 3109.051 (D)(7)	<ul style="list-style-type: none"> • Impact of abuse, including trauma, on child's safety and health • Neglect of the child during parenting time • Impact of non-custodial parent's health on child's health and safety • Non-custodial parent's support or interference with child's treatment • Child's or non-custodial parent's protective factors, e.g., resiliency, social connections, and solid network of support in times of need
Time available for the child to spend with siblings R.C. 3109.051 (D)(8)	<ul style="list-style-type: none"> • Non-custodial parent's interference with contact between child and siblings creates conflict for other parent • Non-custodial parent's willingness to foster positive relationship between child and siblings
Mental and physical health of all parties R.C. 3109.051 (D)(9)	<ul style="list-style-type: none"> • Impact of abuse, including trauma, on mental and physical well-being of child and parents • Impact of either parent's mental and physical health on safety and well-being of child and other parent • Non-custodial parent's willingness to participate in or seek treatment for self and child • Non-custodial parent's interference with or resistance to treatment of child and other parent • Increased risk of harm due to child's physical or developmental disability

Best Interest Factors for Companionship Rights - CONTINUED

	Domestic Violence Indicators & Considerations
<p>Parent's willingness to reschedule missed parenting time and to facilitate the other parent's parenting time R.C. 3109.051 (D)(10)</p>	<ul style="list-style-type: none"> • Custodial parent's unwillingness to facilitate or reschedule missed parenting time is due to the child's health or safety concerns • Rescheduling of missed parenting time is used to harass, coerce, or have unwanted contact with other parent • Non-custodial parent's requests to reschedule missed parenting time results in repeated or egregious interference with the child's or other parent's established schedule or routine
<p>Convicted of or pleaded guilty to any criminal offense involving an act that resulted in child abuse or neglect R.C. 3109.051 (D)(11)</p>	<ul style="list-style-type: none"> • Impact of crime on child and parents • Potential of abusive or neglectful behavior to child • Potential of convicted parent to recidivate or rehabilitate
<p>Convicted of or pleaded guilty to domestic violence or any offense involving a family or household member; whether there is reason to believe the person acted in a manner that resulted in child abuse or neglect R.C. 3109.051 (D)(12)</p>	<ul style="list-style-type: none"> • Impact of domestic violence and other crime on child and parents • Extent to which the crime or behaviors involve the acts noted in the Lethality or Risk Factors • Potential of abusive or neglectful behavior to child • Potential of convicted parent to recidivate or rehabilitate
<p>Continuously and willfully denied the other parent's right to parenting time R.C. 3109.051 (D)(13)</p>	<ul style="list-style-type: none"> • History of abuse or ongoing threats to harm or kidnap the child • Resistance to or denial of parenting time due to concerns for child's safety or impact of trauma on child • Child independently resists parenting time due to fear or trauma
<p>Established a residence or is planning to establish a residence outside this state R.C. 3109.051 (D)(14)</p>	<ul style="list-style-type: none"> • Relocation motivated by safety considerations • Child's safety and well-being relative to relocation • Child's and parent's basic needs relative to relocation • Threats to harm or kidnap the child
<p>Wishes and concerns of the child's parents R.C. 3109.051 (D)(15)</p>	<ul style="list-style-type: none"> • Parent's fears or concerns about child's safety and well-being • Child's safety and well-being, if court follows parent's wishes
<p>Other factors R.C. 3109.051 (D)(16)</p>	<ul style="list-style-type: none"> • Misuse of parenting time • Non-custodial parent respects other parent's boundaries • Non-custodial parent honors the terms and condition of all court orders • Non-custodial parent has access to resources, including support network • Training, experience, and expertise of professionals rendering opinions on domestic violence or other relevant issues, e.g., sexual assault and child abuse

Parenting Plan Continuum

The presence of domestic violence impacts meaningful allocation of parental rights and responsibilities and enforcement of the parenting plan. The Parenting Plan Continuum offers guidance for each type of parenting-time arrangement, including the level of violence, risk factors, and safety concerns relevant in allocating parenting time. Generally, shared parenting (i.e., with parallel parenting or co-parenting terms) or unsupervised parenting time are appropriate for families where there is no significant history of or only isolated acts of domestic violence. Conversely, suspended contact or supervised parenting time is recommended for families who have experienced serious abuse, coercive control, and stalking. Over time, the court may reassess to determine whether restrictions, once imposed, may be modified to permit more (or less) contact.

	Most Successful, If...
Shared Parenting Co-Parenting (Parents Make Decisions Jointly): Generally indicated if low risk of lethality to a parent and child	<ul style="list-style-type: none"> • No significant history of violence, abuse, or threats • Isolated minor acts of violence at separation not characterized as coercive control • Offending parent expressed remorse and took responsibility for violence • Successfully completed substance abuse or mental health treatment or counseling program, if ordered • Low level of conflict and capacity to communicate • Parents recognize and support child’s needs • Parents hold common child-rearing outlook and style • Post-separation relationship characterized as civil and child-focused
Shared Parenting Parallel Parenting (Each Parent Has Separate & Specific Responsibilities): Generally indicated if moderate to low risk of lethality to a parent and low risk of lethality to child	<ul style="list-style-type: none"> • Isolated acts of violence not characterized as coercive control (see Lethality or Risk Factors) • No current violence or explicit threats of violence • Offending parent took responsibility for violence • Completed substance abuse or mental health treatment or counseling program, if ordered • Parents have incompatible child-rearing outlook and style • To avoid conflict, parents need structured, detailed plan including: <ul style="list-style-type: none"> ○ Divided decision-making, stating specific responsibilities allocated to each parent ○ Clear boundaries ○ Parenting time schedule requires minimal or no contact between parents ○ Natural transition times and places to minimize disruption for child ○ Permanent restraining orders ○ Restraints from removing child from area without consent ○ Structured telephone contact with child ○ Clear procedure to communicate emergencies and other information and resolve new issues

Parenting Plan Continuum - CONTINUED

	Most Successful, If...
<p>Unsupervised Parenting Time With or Without Supervised Exchanges: Generally indicated if non-custodial parent poses moderate to low risk of lethality to a parent and child</p>	<ul style="list-style-type: none"> • Non-offending parent as legal custodian • History of violence, abuse, or threats, possibly characterized as coercive control (see Lethality or Risk Factors), yet non-custodial parent does not pose risk to the safety or well-being of the child, while parenting • Offending parent took full responsibility for violence • Non-custodial parent is actively engaged in or completed substance abuse or mental health treatment or counseling program, if ordered • Risk or fear of renewed violence only occurs when parents interact with one another • Moderate level of conflict between parents • No present risk of child abuse • Child does not fear non-custodial parent • Non-custodial parent's support network promotes safety of child and other parent • Clearly defined and readily enforceable parenting terms and conditions, tailored to provide safety
<p>Supervised Parenting Time: Generally indicated if non-custodial parent poses high to moderate risk of lethality to a parent and child</p>	<ul style="list-style-type: none"> • Non-offending parent as sole custodian • History of and ongoing violence, abuse, or threats, possibly characterized by coercive control (see Lethality or Risk Factors) • Offending parent did not take full responsibility for past acts of violence or abuse • Current substance abuse or acute mental illness of non-custodial parent • Established risk of child abuse • Kidnapping threats • Child exhibits fear of non-custodial parent • Child has reduced ability to manage contact, which increases vulnerability • Child traumatized by abuse may want contact with the other parent and is clinically appropriate • Non-custodial parent is not a risk for safety or well-being of the child • Structured environment is available in community to monitor behaviors during parenting time or time of child transition from one parent to the other
<p>Suspended Contact: Generally indicated if non-custodial parent poses high risk of lethality to a parent and child ; parenting time is characterized by <u>no</u> physical contact and limited, if any, communication between parents</p>	<ul style="list-style-type: none"> • Non-offending parent as sole custodian • Significant history of and ongoing violence, abuse or threats, characterized by coercive control (see Lethality or Risk Factors) • Offense caused domestic violence or serious physical harm • Little or no remorse for past acts of violence or abuse, no willingness to change behaviors, or accept responsibility • Severe, current substance abuse or mental illness of non-custodial parent • Little or no investment in treatment or counseling program • Substantiated or proven child abuse • Kidnapping attempts • Child has reduced ability to manage contact, which increases vulnerability • Fear or refusal of child to visit with non-custodial parent due to severe trauma of abuse • Non-compliance with terms of supervised parenting time

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