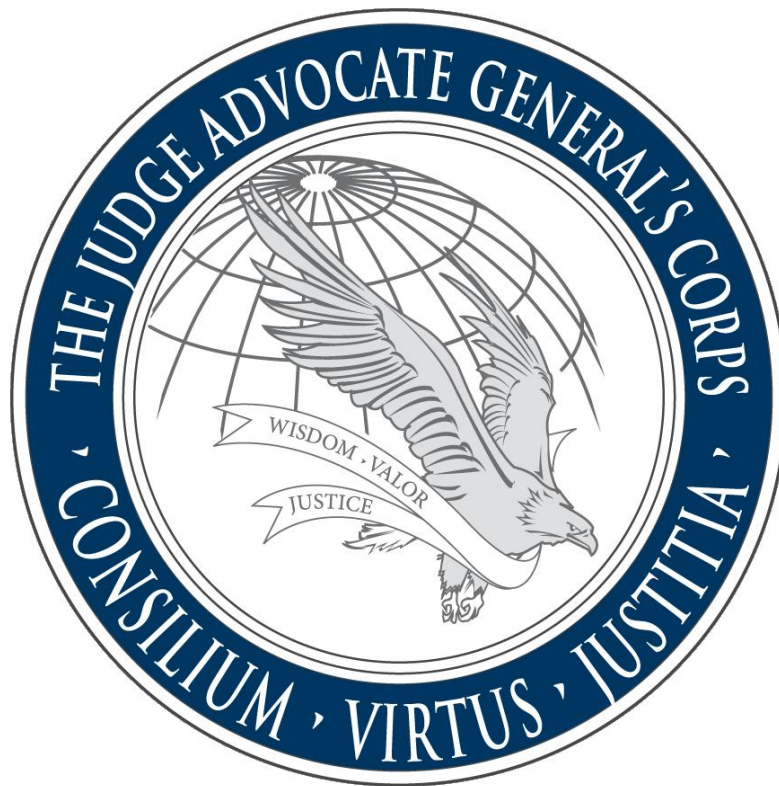


Ohio Divorce Law



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Ohio Divorce Law

The below information is merely a quick reference guide on Ohio Divorce Law. In Ohio only the Court of Common Pleas (Domestic Relations Division) in each county has the jurisdiction to grant a Divorce, Legal Separation, Annulment, or Dissolution. If you are considering legal separation you are urged to consult with an attorney.

It should be noted that dissolution and divorce are two distinct terms, but both can be used to terminate a marriage. Dissolution is when both spouses agree to divide their assets and agree on issues like child support, spousal support, and parenting time. The spouses must agree on every issue in order for the separation to be processed as a dissolution. If the parties cannot agree on every issue, then a marriage must be terminated by a divorce. In a divorce, it may be beneficial for you to retain a local private attorney, as military legal assistance attorneys cannot represent you in civil proceedings, or otherwise fill out any court documents. The Dayton Bar Association offers a Lawyer Referral Service (<https://www.daybar.org/page/LRS>) that may be able to connect you with a family law attorney to represent you in court. Note that this link is provided for informational purposes only and does not constitute endorsement by the Air Force of either the Dayton Bar Association or any of its member attorneys.

Source: <https://www.ohiobar.org/public-resources/commonly-asked-law-questions-results/law-facts/law-facts-divorce-dissolution--separation/>

Interim update: Divorce Proceedings during Coronavirus Pandemic (a/o 16 April 2020)

Availability of Courts during Pandemic

- Ohio courts are open, but are limited to essential functions. What is deemed essential varies by county.
- Many Domestic Relations Courts in Ohio are hearing emergency petitions only.
 - Montgomery County Domestic Relations Court is open for emergency and domestic violence petitions only (effective 2 April 2020 until withdrawn).
 - All other routine business (which would include divorce hearings, mediations, etc.) will be re-scheduled.
 - However, the Clerk of Courts Office is open with normal hours.
 - Mandatory parenting class for those seeking divorce with children under 18 has been suspended through at least 5 May 2020.
 - Greene County Domestic Relations Court is open but hearing primarily emergency petitions; other cases are proceeding on case-by-case determination.
 - The Clerk of Court's Office is open for filing; delays for compliance review (for those filing without a lawyer) may occur.
- Helpful tips:
 - If preparing to file *pro se* (self-representation or without an attorney representing you) call the clerk of courts in the county where you live in order to:
 - Confirm hours,
 - Find out about any new additional screening protocols to expect (e.g., questionnaire about recent travel, taking of temperature prior to entry), and,
 - Inquire about the availability of E-filing to help keep you and their staff safe and healthy.
 - If you have a hearing already scheduled:
 - If you have an attorney, call/email them to determine schedule impacts.
 - If you are *pro se*, call the domestic relations court in the county where the case was filed to determine when/how hearing will proceed.
 - If you want to find an attorney to represent you in a future proceeding, many law offices are still open but conducting consultations via video-conferencing or phone calls.

Marriage: Ohio Revised Code (O.R.C.) §3101.01 et seq.

- Persons must be 18 years old to marry
 - In Ohio, the marriage may not be “nearer of kin” than second cousins. The two people joining in marriage cannot be married if one or both parties are still married to a different person. (O.R.C. § 3101.01(A))

Marriage licenses

- Common Law marriage in Ohio was abolished in October 1991 – however all common law marriages prior to 1991 are still valid. (O.R.C. §3105.12)

Divorce – O.R.C. §3105.01 et seq.

- Grounds – O.R.C. §3105.01

Fault Based

- Bigamy (although this word is not used).
- Willful absence of the adverse party for one year (abandonment).
- Adultery.
- Extreme Cruelty.
- Fraudulent contract.
- Gross neglect of duty.
- Habitual drunkenness.
- Imprisonment of the adverse party (note: need to bring a witness).
- Procurement of foreign divorce by the adverse party not recognized in OH.

Non-Fault Based

- Living apart for more than one year without cohabitation.
- Incompatibility not denied by the adverse party.

Jurisdiction – O.R.C. §3105.03

- Resident of OH for 6 months prior to the commencement of the action.
- Resident of the county in which the action is commenced for at least 90 days prior to commencement of the action (note: this is a Civil Rule of procedure Civ. R. 3(B)(9)).

Equitable Division of Debts and Assets – O.R.C. §3105.171

- Marital Property – that acquired during the marriage, that includes real and personal property.
- Separate Property – that acquired before the marriage with certain exceptions (wedding bands/engagement rings are separate property unless purchased after marriage).

Spousal Support (Alimony) – O.R.C. §3105.18

- Determining factors – O.R.C. §3105.18(C)(1)(a)-(n)
 - Income of the parties
 - Relative earning capacity of the parties (education of the parties)
 - Duration of the marriage

Legal Separation – O.R.C. §3105.17

- Grounds are same as for a divorce except the additional ground of Adultery.

Annulment – O.R.C. §3105.31

- Under the age for marriage (must be brought within 2 years of the age of marriage O.R.C. §3105.32(A)).
- Bigamy (no statute of limitations O.R.C. §3105.32(B)).
- Adverse party adjudged incompetent (no statute of limitations O.R.C. §3105.32(C)).
- Consent obtained by fraud (within 2 years from the date of discovery O.R.C. §3105.32(D)).
- Marriage obtained by force (within 2 years of marriage O.R.C. §3105.32(E)).
- Marriage never consummated (within 2 years of marriage (O.R.C. §3105.32(E)).

Dissolution – O.R.C. §3105.62

- Jurisdiction – same as for a divorce – O.R.C. §3105.62

- Separation Agreement provisions – O.R.C. §3105.63
 - Division of all debts and assets (to include pensions)
 - Allocation of parental rights and responsibilities
 - Must be signed by both parties
- Can be converted into a divorce – O.R.C. §3105.65

Custody – O.R.C. §3109.01 et seq.

- Residential and custodial parent
- Non-Residential and custodial parent
- Shared Parenting
- Best Interest Factors – O.R.C. §3109.04(F)(1)(a)-(j)
 - Wishes of the parents
 - Wishes of the children -interview in chambers upon request of either party
 - Interaction with siblings
 - Physical and mental health of parties and children
 - Payment of child support
 - Party more likely to facilitate visitation
 - Been convicted of a crime involving child abuse, neglect or abandonment
 - Establish or intention to establish a residence outside of OH
- Who may petition for custody? – Anyone
 - Legal Standard
 - Biological Parent v. Biological Parent = Best interests
 - Biological Parent v. Non-Biological Parent = Unsuitability then Best Interests (In re Perales, 52 Ohio St.2d 89 (1977))

Jurisdiction

- Court of Common Pleas (Domestic Relations Division) in a Divorce, Dissolution, Annulment

- Juvenile Division of the Court of Common Pleas – O.R.C. §2151.23, (often simply called Juvenile Court) for unmarried parents.
- By order of the OH Supreme Court all indigent litigants are entitled to a court appointed attorney for all cases arising in Juvenile Court, State ex rel. Asberry v. Payne, 82 Ohio St.3d 44 (1998).
 - This was overturned by statute via In re D.J.M 2011 Ohio 6836.
 - “The right to appointed counsel for indigent parties at government expense does not apply to civil custody matters filed under O.R.C. §2151.23(A)(2).

Unmarried Mother

- Presumed to be the custodial parent unless there is a court order stating otherwise at which point the mother and father are to be treated equally when designating custodianship. (O.R.C. §3109.042)
 - An unmarried mother convicted of rape, and whose child is the result of such actions cannot be the residential or custodial parent of that child. (O.R.C. §3109.042(B))

Visitation – O.R.C. §3109.05.1

- Grandparent visitation – O.R.C. §§3109.051(B), 3109.11, 3109.12

Child Support

- Determination – O.R.C. §3119.022
 - Worksheet – combined incomes of both parties
- Obligation – O.R.C. §3103.03
 - Until age 18, unless still attending an accredited high school full time or until age 19

Uniform Interstate Family Support Act – O.R.C. §3115.01 et seq.

Child Support Enforcement – O.R.C. §3121.01 et seq.

- County CSEAs enforce both administrative orders and court orders
- Money is collected by a Child Support Payment Central (Columbus)

Enforcement Tools – O.R.C. §3123.01 et seq.

- Wage garnishment
- IRS/State Income Tax intercept
- Bank account garnishment
- Driver's, Professional, Recreational license suspension
- Criminal contempt

Domestic Violence – O.R.C. §3113.04 et seq.

You may view the Ohio Revised Code at <http://codes.ohio.gov/orc>.

Support to Dependents in the Air Force absent a Court Order

- AFI 36-2906, *Personal Financial Responsibility*, dated 30 July 2018, defines a minimum that Air Force service members must provide to their dependents to constitute adequate support.
 - Chapter 4 details the formula and how to compute based on Basic Allowance for Housing (BAH) non-locality rate and the number of dependents you have.
- Consult with a legal assistance attorney for specific advice regarding whether this provision is applicable to your facts and circumstances.

The information contained in this pamphlet is intended to provide you with a general overview of the law. It is not intended to be comprehensive, and should not be considered legal advice. If you have questions you should contact an attorney.

A military legal assistance attorney can provide guidance on these matters free of charge to all active duty personnel and their dependents along with reservists and guardsmen on federal active duty and their dependents. In addition, retired personnel, their dependents, and dependent survivors may also receive legal assistance to the extent personnel and facilities are available.

To schedule an appointment to discuss these or other legal matters you can contact the Wright-Patterson Air Force Base, 88th Air Base Wing Legal Assistance Office at (937) 257-6142, DSN 787-6142, or 88ABW.JA@us.af.mil.

Additional information may be available on the Air Force Legal Assistance Website <https://aflegalassistance.law.af.mil> and the Armed Forces Legal Assistance Website <http://legalassistance.law.af.mil/>.

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