

## **Frequently Asked Questions about Custody, Ohio Law, and Parents with Disabilities**

### **How does Ohio law treat custody and parents with disabilities?**

Ohio law section R.C. 2131.03 outlaws discrimination on the basis of disability in custody decisions and requires custody decision-makers to take into account modifications and supportive services that may be available to parents with disabilities. The law helps ensure that parents with disabilities have an equal opportunity to keep or obtain custody of their children.

### **Why is this law necessary?**

Many parents with disabilities encounter unjustified biases and stereotypes about their ability to care for a minor. The Ability Center has seen circumstances where custody decision makers have assumed that a parent's disability will keep them from being a good parent without any further information about their relationship with the child or ability to live independently. Most parents with disabilities are good parents regardless of whether they have a disability and should be evaluated like any other parent.

### **Who does this law protect?**

R.C. 2131.03 applies to any person with a disability who has children, wants to be a foster parent or adopt children, or who would be appointed as a guardian to children. The law applies to cases that arise in Juvenile or Family Court where parents are separated or divorced and need to settle a custody agreement. It also applies to decisions made as part of an investigation by Children Services and decisions made by adoption agencies.

### **When does this law apply?**

Under R.C. 2131.03, no **court, public children services agency, private child placing agency, or private noncustodial agency** can deny or limit a person in any of four different activities solely because that person has a disability.

R.C. 2131.03 prohibits discrimination based on a person's disability in the following cases involving a minor:

- **Exercising custody, parenting time, or visitation rights;**
- **Adopting;**
- **Being a foster caregiver;**
- **Becoming an appointed guardian.**

### **What else does the law say?**

The law also instructs a custody decision-maker to consider modifications and supportive services that are available to a parent with disabilities when making decisions about custody. It states that a custody decisions maker shall determine whether modifications and supportive services are necessary and reasonable for a parent with a disability seeking custody or guardianship of a minor. In doing so, it requires custody decision-makers to consider modifications and supportive services in evaluating a person with a disability's fitness to parent.

### **What are modifications or supportive services?**

Modifications or supportive services are defined as any service provided through a program or agency at the federal, state, or local level that assists a person with a disability with day-to-day activities and responsibilities, including those associated with the care and supervision of a minor.

Modifications or supportive services could include technology or durable medical equipment that assist a person with disabilities in caring for a child, access to public transit, counseling, in-home assistance, family assistance, or any other supportive services that assist the person in caring for his or her child.

### **Why are modifications and supportive services part of this law?**

Modifications of policies and supportive services assist many people with disabilities in living independently. Those same services that assist people with disabilities in living independently can assist a person in taking care of a minor.

For example, a decision maker may wonder how a person who is blind can assist a child with his or her homework. However, a parent who is blind may use computer software or braille to read and can assist a child with his or her homework if they have access to it on a computer or in braille form.

A decision maker may wonder how a parent whose disability prevents them from driving can take a child to doctor's appointments. However, the parent is likely eligible for paratransit, a public transit system available to many people with disabilities who cannot drive. The parent can take a child to the child's doctor appointments by relying on public transportation.

### **Can a custody decision-maker require a parent with a disability to implement modifications or supportive services?**

Yes, under R.C. 2131.03, a custody decision-maker can determine that modifications and supportive services are necessary and reasonable to assist a person with a disability to conduct the activities or exercise the authority required to care for a minor. The custody decision maker

must review the continued necessity and reasonableness after a period of time. This is an authority already exercised by custody decision-makers, who may require parents to, for example, go to counseling or anger management classes as part of obtaining custody or guardianship.

**Is there a limit to the modifications and supportive services that a custody decision maker must consider in evaluating a parent's ability to care for a minor?**

Yes, modifications and supportive services must be **reasonable**. If the necessary modifications or supportive services are unreasonable, a custody decision maker can limit or deny custody or guardianship.

**What else does this law do?**

R.C. 2131.03 requires a court, public children's services agency, private child placing agency, or private noncustodial agency to provide its reasons for its decision regarding custody or guardianship in writing. A public children's services agency, private child placing agency, or private noncustodial agency must provide its reasons in writing for a decision involving guardianship or custody. A court must make specific written findings of fact and conclusions of law for a decision regarding custody or guardianship.

**Can a parent with disabilities challenge a determination?**

Yes, a parent with a disability can challenge a limitation or denial of custody or guardianship or a decision about modifications and supportive services by a custody decision maker. A parent who wishes to challenge a determination by a children services agency or adoption agency must file a lawsuit. A parent who wishes to challenge a determination by a court must file a motion challenging the determination.

The lawsuit or motion can challenge either:

- The determination regarding modifications or supportive services; or
- A limitation or denial of custody or guardianship.

**What happens after a parent challenges a determination under R.C. 2131.03?**

A court must evaluate the determination and either:

- Affirm the modifications or supportive services or limitation or denial of custody or guardianship and make specific, written findings of fact and conclusions of law providing the basis for its decision as to why reasonable modifications or supportive services are necessary or insufficient to alleviate any concerns; or
- Rescind the previous determination and grant the person the right to exercise custody or guardianship with or without reasonable modifications and supportive services.

**When did this law go into effect?**

Governor DeWine signed R.C. 2131.03 on January 2, 2023, and the law goes into effect 90 days after his signature. Therefore, the law applies to all custody decision making April 2, 2023.

**What if I have further questions about this law?**

For further questions about this law, contact The Ability Center at 419-885-5733.