

Community Legal Aid

A non-profit law firm serving the legal needs of low-income individuals and families in central northeast Ohio



www.communitylegalaid.org

Parenthood Toolkit: Unmarried Mothers' Custodial Rights

The information in this section assumes:

- The biological mother and father of the child were not married to each other when the child was born or shortly thereafter.
- The mother was not married to anyone else when the child was born.
- There are no court orders giving anyone custody or visitation with the child.

If any facts above are not true, this information may not apply to your situation.

The law is clear: An unmarried woman in Ohio who gives birth to a child has custody of the child automatically, without having to go to court. That means they have all the rights of a parent:

- the right to decide who sees the child and for how long
- the right to restrict visitation
- the right to determine where the child lives
- the right to enroll the child in school
- the right to obtain medical treatment
- the right to get public benefits for the child
- the right to do anything else a parent with legal custody can do

But courts can still decide custody and parenting time (visitation). If the child's other parent files for custody or parenting time in court, the court will hear the case and make a decision about parental rights and responsibilities. Once a parent files in court, the court must give each parent an equal opportunity to prove that he/she/they is the better parent to have custody and parenting time.

When deciding custody and parenting time, the court will look at **what is in the best interest of the child**. In general, the court will consider who best met the needs of the child, who has done most of the feeding and bathing, arranging for medical care and education, preparing the child for sleep and arranging for babysitters, etc.

The court will also look at other factors such as:

- the mental and physical health of the parents
- whether either parent has a history of domestic violence, abuse, or neglect
- the child's relationship with other family members
- how each parenting has provided financial and emotional support to the child
- which parent is more likely to honor visitation rights
- the living environment where the child will live

You should consider allowing the other parent to have time visiting with your child, unless you have concerns for the child's health or safety. Courts look at which parent is more likely to allow the other parent time with the child. One way to prove that you will allow visitation with the other parent in the future is to allow visitation now. It's a good idea, even if there is no court order that requires it.

This does not mean you have to go looking for the other parent. It means that if they are interested in visiting with the child, you should set up a meaningful schedule so that the other parent will not be able to prove that you would deny them visits.

If you agree to visits, keep a log. Write down the day and time your child leaves and returns, what the child was sent with and what was returned, and any issues that arise and how you attempted to solve them.

For example:

05/02/2021 at 10:00 am - Child sent with swimming suit and sun hat.

05/02/2021 at 7:23 pm - Child returned 1 hr 23 minutes late; no hat.

05/15/2021 at 10:00 am - Child sent with book

05/15/2021 at 6:00 pm - Child returned on time with book. Good visit.

Note: If the other parent threatens to harm or run away with the child, you do not need to allow visits unless there is a court order requiring that. If there is, you can notify the court or consult an attorney.

Courts prefer that parents make their own arrangements, but if you can't, the court will order a standard schedule if the noncustodial parent requests it, assuming they are able to care for the child. Most courts have a local standard visitation (parenting time) schedule. You may be able to get a copy at the Clerk of Courts or online.

You may not be able to get child support (or some other public benefits) for your child until paternity is established. That means, you may need to legally determine who the other parent of the child is. Your local Child Support Enforcement Agency can help you establish paternity and get child support.

If you receive public benefits (like OWF), you may be required to help the Department of Job and Family services in establishing paternity, unless the other parent has abused you and you fear for your safety.

A paternity order has no effect on an unmarried mother's custody of the child. The other parent must ask the court to order visitation (parenting time) or change custody. The court should not automatically issue a custody or visitation order.

I'm ready to file my paperwork in court.

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<http://www.communitylegalaid.org/parenthood/toolkit/mothers>

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