

Community Legal Aid

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



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Unmarried Mothers Have Legal Custody

This fact sheet can help you, an unmarried mother, understand your right to custody of your child. This fact sheet assumes:

- you and the father of the child have never married each other;
- you were 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 of these facts are not true, this information might not apply to you.

The Law Is Clear: An unmarried woman who gives birth to a child has custody of the child automatically. The law states:

“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.” (Ohio Revised Code 3109.042)

You have legal custody of your child without having to go to court. That means you 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 enroll the child in school;
- the right to obtain medical treatment;
- the right to get public benefits for the child; and
- the right to do anything else a parent with legal custody can do.

Courts Can Still Decide Custody: If the child’s father files in court for custody, the court will decide custody based on the facts. The law does not mean the Court will automatically give you

legal custody. This is true even if the child has been living with you. The Court must give each parent an equal opportunity to prove that he or she is the better parent to have custody.

When deciding custody, the Court will look at the 'best interest of the child.' In general, the court will consider who best met the needs of the child.

The court will look at 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;
- the child's relationship with other family members;
- whether a parent hasn't paid child support; and
- which parent is more likely to honor visitation rights.

Allowing Visitation: Unless you have concerns for the health or safety of the child during visitation, you should consider allowing reasonable visitation. Courts consider which parent is more likely to allow the other parent time with the child. In the future, the father may ask a Court to decide custody of your child. The court will consider whether you have permitted visitation. One way to prove that you will allow visitation with the father in the future is to allow visitation now. It's a good idea even if there is no court order that requires it. However, if the father has threatened to harm or flee with the child, you have no duty to allow visits.

This does not mean you have to go looking for the father. It means that if he is interested in visiting with the child, you should set up a meaningful schedule. In that way, the father will not be able to prove that you would deny him visits.

Courts prefer that parents to make their own arrangements. If they can't, the court will order a standard schedule if the father requests it. This assumes that the father is suitable to care for the child. Each Court of Common Pleas has a local standard visitation schedule. You can obtain a copy at the Clerk of Courts, on-line or at your local Legal Aid office.

Paternity And Child Support: If you seek child support, you will be required to help legally establish the paternity. That is to determine who the father of the child is. A paternity order has no effect on an unmarried mother's custody of the child. Fathers must seek an order in court to obtain a visitation or change custody. The court should not automatically issue a custody or visitation order.

If paternity has not been established, your local Child Support Enforcement Agency can help you establish paternity and get child support. You cannot get child support until paternity is established.

*This article is meant to give you general information and not to give you specific legal advice.
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