

UNMARRIED MOTHERS HAVE LEGAL CUSTODY

You are the mother of a child. You and the father of the child have never married each other, and you were not married to anyone else when the child was born. There are no court orders giving anyone custody of, or visitation, with the child. You have contacted our office to get legal custody. If any of these facts are not true, the following information might not apply to you.

THE LAW HAS CHANGED

On January 1, 1998, the law changed in Ohio. Now, an unmarried woman who gives birth to a child has legal custody of the child automatically, unless a court gives custody to someone else. This is what the new law says:

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 equality when making the designation. (Ohio Revised Code Section 3109.042).

Under the law, you have legal custody of your child without having to go to Court. That means you have 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 law does not mean the Court will automatically give you custody, even if the child has been living with you. The law says that 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 who has taken care of the child by doing 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 things like the mental and physical health of the parents, whether either parent has a history of domestic violence, and the child's relationship with other family members.

ALLOWING VISITATION

Unless you have concerns for the health or safety of the child during visitation, we urge you to consider allowing reasonable visitation if the father asks for it. The reason for this is that the Court will also consider which parent is more likely to allow the other parent visitation with the child in the future when it decides custody. One of the ways to prove that you would allow visitation with the father in the future is to allow visitation now, even if a Court has not ordered visitation and you are not yet required to allow it. 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 visitation schedule. That way, the father will not be able to prove that you would deny him visitation in the future.

If paternity has not been established, many mothers feel that they have the right to deny visitation. However, under the new law, the Courts may decide that the lack of paternity is not a good enough reason to deny visitation, especially if no one really disagrees about who the father is.

PATERNITY AND CHILD SUPPORT

Establishing paternity has no effect on an unmarried mother's custody of the child, as long as a Court does not 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.