

## **CUSTODY RIGHTS BETWEEN UNMARRIED PERSONS**

Custody of minor children can be done in two specific ways. Legal custody determines who has the right to make important decisions regarding a child (i.e., education, health, religion, etc.). Physical custody determines who has a child the majority of the time.

**IMPORTANT:** Custody laws are different for children who are born to unmarried persons and children who are born to married persons.

*Please pay close attention to the following:*

If a child is born to unmarried persons and there is no **COURT ORDER** identifying a father, a mother automatically has both legal and physical custody of a child. In order for a potential father to have any custody/visitation rights to a child, there **MUST** be a **COURT ORDER**. The court order must be signed by a judge. This is known as establishment of parentage. This can be done with a DNA test or an acknowledgement of paternity signed by a potential father. Either way, a judge's signature on an order is **required**. Signing a birth certificate is not enough. While signing a birth certificate indicates possible paternity, it is not proof of paternity; nor does it give any rights to the potential father. It is important to note that it is possible for a potential father to end up with custody rights even if he is not listed on the child's birth certificate.

If there is a custody or dispute between a mother and a potential father, law enforcement is supposed to assist the mother in retrieving/keeping a child.

Paternity can be established either by a mother or a potential father. Either parent can file a petition to establish parentage and that parent does not need the permission of the other to file this petition. These petitions need to be filed in a court in the county

where either the child, mother or father live. Once one of these documents is filed, the court will require either a DNA test or a voluntary acknowledgement of paternity by a potential father. Once this requirement has been met, the court will sign an order declaring a potential father to be the actual father. At that point, a father will be able to ask the court for custody or visitation rights with a child. (If there has been a history of abusive or violent behavior by either parent, that parent may be granted supervised visitation only or none at all, depending upon the level of danger.) Thereafter, the court will determine who has legal custody and who has physical custody of a child.

The court then has the option of giving both legal and physical custody to one parent, giving joint legal and joint physical custody to both parents, or giving legal custody to one parent. This decision will be made on a case by case basis at the sole discretion of a judge.

Once a child has been legitimated, the court can then order the payment of child support. The court can also order that a minor child's last name be changed to that of the father. (If there is difficulty receiving court-ordered child support, you may contact the Child Support Enforcement Office in your county.)

## **CUSTODY RIGHTS BETWEEN MARRIED PERSONS**

As stated above, different laws apply when a child is born to married persons. In the case of married persons, **BOTH** parents have equal rights and access to children if there is no custody order that states otherwise. Therefore, whoever has physical possession of a child has "custody" of that child until there is a court

order. Law enforcement will not get involved in this kind of situation.

There are several ways custody can be legally determined between married persons. First, custody can be determined in a divorce action. Second, custody can be determined in a dependency and neglect case filed in Juvenile Court. Third, custody can be temporarily determined in an order of protection case. It is important to note that custody determinations may vary greatly between different courts of different counties. Therefore it would be extremely beneficial to get familiar with the specific custody laws in your area.

As with unmarried persons, the court has the option of giving both legal and physical custody (or shared parenting) to one parent, giving joint legal and joint physical custody (or share parenting) to both parents, or giving legal custody to one parent and physical custody to the other parent. This decision is made on a case by case basis at the sole discretion of a judge.

## **CUSTODY RIGHTS IN JUVENILE COURT**

Many people wrongly believe that only the parents of a child can file for custody. That is not the case. **ANYONE** may file for custody of a child in a Juvenile Court if allegations of abuse or dependency and neglect are made. If a Juvenile Court determines that allegations are serious enough, a child may be immediately removed from a parent/guardian/custodian without a hearing. If that occurs, the parent/guardian/ custodian has a legal right to a probable cause hearing within three (3) days of the removal or the signing of an order authorizing a removal. If a Juvenile Court then determines that there is probable cause to remove a child from the parent/guardian/custodian, a trial date will be set for some time in the near future.

Parents/guardians/custodians at risk of losing their children may have the right to have an attorney appointed to represent them at no cost in juvenile court. Qualifying for an appointed attorney depends upon the financial situation of that parent/guardian/custodian. If the Juvenile Court believes that a parent/guardian/custodian cannot afford to hire an attorney, an attorney may be appointed at no cost to the parent/guardian/custodian. The parent/guardian/custodian will need to ask the Juvenile Court about this option.

The children may be appointed an attorney of their own. This attorney is called a Guardian Ad Litem. The Guardian Ad Litem does not represent the parents/guardians/custodians. The Guardian Ad Litem will investigate the case and make a recommendation to the court about what is best for the children. The court does not have to follow this recommendation. However, the court is likely to follow the recommendation. Additionally, the court will determine who has to pay the Guardian Ad Litem fees.



## OFFICE HOURS AND LOCATION

Legal Aid of East Tennessee offices are open from 8:30 A.M. to 5:00 P.M. Monday through Friday.

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This pamphlet is intended for general information only. The circumstances of every case are different and need to be dealt with on a case-by-case basis. This is not a substitute for the advice of a lawyer. Also, the law may change and may be different from county to county.



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# BASIC CUSTODY GUIDE



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