

# **BASIC CUSTODY GUIDE**



JUSTICE FOR ALL

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## **CUSTODY RIGHTS BETWEEN UNMARRIED PERSONS**

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

There are two types of custody: Legal custody is who has the right to make important decisions regarding a child (i.e., education, health, religion, etc.). Physical custody is who has the child lives with most of the time.

When a child is born to unmarried persons and there is no **COURT ORDER** identifying a father, the mother automatically has both legal and physical custody of the child. (T.C.A. §36-2-303) For a potential father to have any custody/visitation rights to a child, there **MUST** be a **COURT ORDER** that is 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 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 dispute between a mother and a potential father, law enforcement should assist the mother in retrieving/keeping the child.

Paternity can be established either by the mother or the 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. The petition needs to be filed in a court in the county where either the child, mother or father live. Once the petition 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, the father will be able to ask the court for a hearing to decide custody or visitation rights with the 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 the 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 parentage has been decided, the court can order child support. The court can also order that a minor child's last name be changed to that of the father. (If you have problems getting court-ordered child support, contact the Child Support Enforcement Office in your county.)

## CUSTODY RIGHTS BETWEEN MARRIED PERSONS

Different laws apply when the child is born to married persons. In the case of married persons, **BOTH** parents have equal rights and access to the children unless there is a custody order that states otherwise.

There are several ways custody can be decided between married persons. First, custody can be decided in a divorce. Second, custody can be decided in a dependency and neglect case filed in Juvenile Court. Third, custody can be temporarily decided in an order of protection case.

## CUSTODY RIGHTS IN JUVENILE COURT

**ANYONE** may file for custody of a child in a Juvenile Court if they believe a child is being abused or neglected. If a Juvenile Court decides that a child is abused or neglected, the child may be immediately removed from the parent without a hearing. If that happens, the parent has a legal right to a hearing within three (3) days of the removal. If a Juvenile Court then decides that there is a reason to remove a child from the parent, a trial date will be set.

Parents at risk of losing their children 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 the parent. If the Juvenile Court believes that a parent cannot afford to hire an attorney, an attorney may be appointed at no

cost to the parent. The parent should ask the Juvenile Court for an attorney.

The children will be appointed an attorney of their own. This attorney is called a Guardian Ad Litem. The Guardian Ad Litem does not represent the parents.



## 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.

Executive Director, David Yoder  
(865)637-0484

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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.

