

CUSTODY RIGHTS BETWEEN UNMARRIED PERSONS

Custody of minor children can exist 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.

If parents are married, the husband is considered to be the father of the children born during the marriage. BOTH parents have equal rights and access to children if there is no custody order that states otherwise. If parents are not married, it is important that parentage be legally established. The father has no legal rights, even if mother and father are living together.

If a child is born to unmarried persons and there is no **COURT ORDER** identifying a father, Tennessee law states that the mother automatically has both legal and physical custody of the 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 parentage signed by a potential father. Either way, a judge's signature on an order is **required**.

Signing an acknowledgement of paternity at the hospital is not proof of parentage and does not 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 visitation dispute between the mother and the potential father, and there is no court order in place, law enforcement may assist the mother in retrieving or keeping the child.

ESTABLISHING PARENTAGE

Parentage can be established by either 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 filed, the court will require either a DNA test or a voluntary acknowledgement of parentage by a potential father. In some cases, if the father refuses to participate, the judge may allow you to testify regarding parentage.

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 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 will decide which parent will have legal custody and physical custody. The

court will also set the visitation schedule for both parents. Decisions regarding legal custody, physical custody, and visitation will be made on a case by case basis at the sole discretion of the judge.

Once parentage has been established, 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, contact the Child Support Enforcement Office in your county.)

Or, if parentage is acknowledged at the hospital when the child is born, both parents complete a legal form called the Voluntary Acknowledgment of Parentage. This places the father's name on the child's original birth certificate, but the father does not have legal visitation rights. A **COURT ORDER** is still needed if there is a dispute.



WHY ESTABLISH PARENTAGE?

IDENTITY

- Right of the child to know both parents and share in the child's up-bringing

MEDICAL

- Child may be insured under father's health insurance
- Knowing medical history of both parents

FINANCIAL BENEFITS

- Child can qualify for benefits from father, such as Social Security, life insurance and inheritance rights.

SUPPORT

- Father contributes to the everyday expenses for the child known as child support.

LAET's 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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CUSTODY RIGHTS FOR UNMARRIED PARENTS



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