

Basic Custody Guide



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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.

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 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 PATERNITY

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 legal 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 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 you have problems getting court-ordered child support, contact the Child Support Enforcement Office in your county.) Paternity can be acknowledged at the hospital when the child is born if both parents complete a legal form called the Voluntary Acknowledgement of Paternity. This will place the father's name is 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 PATERNITY?

IDENTITY

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

MEDICAL

- Child may be insured under father's health insurance.
- Medical history of both parents is known.

FINANCIAL BENEFITS

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

SUPPORT

- Father contributes to the everyday expenses for the child (child support)

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.

PARENTAL RELOCATION

This brochure is about what happens when a parent with a child wants to move out of state or more than fifty (50) miles away from the other parent.

Tennessee has a law that requires a parent with a minor child who wants to move out of state or more than fifty (50) miles away from the other parent to do certain things before moving. This law only applies if the parent who wants to move either lives with the child or visits the child and, if it is the child's father, who has already established paternity through the court.

This brochure is only intended as a short summary of Tennessee law on parental relocation. For further information, you should consult an attorney.

WHAT DOES THE LAW REQUIRE?

1. Notice to the other parent: The parent who wants to move must send the other parent a written notice before they move.

- The notice should tell the other parent where they are moving and their reasons for moving. Also, it has to tell the other parent that they have the right to file a petition in court within thirty (30) days if they do not agree with the move or the moving parent will be allowed to move automatically.
- The notice has to be sent by certified or registered mail to the other parent.
- The notice has to be sent at least sixty (60) days before the move.

2. New visitation schedule: After giving notice, the parent who is moving must see if the other parent will agree to a new visitation schedule, including transportation costs for exchange of the child. If the parents cannot agree on a new schedule, the parent wanting to move must file a petition in court to change visitation to a schedule that will work after the move. The court will hold a hearing and decide.

WHAT IF THE PARENT WHO IS NOT MOVING IS AGAINST THE PARENT MOVING WITH THE CHILD?

1. The parent who is moving away must file a petition with the court asking for approval of the relocation by the court. The non-moving parent must file a response within 30 days to prevent the move.

2. Alternately, the non-moving parent may file a petition opposing the move within thirty (30) days of the parent receiving the notice from the other parent about moving.

3. The court will decide whether the parent wanting to move with the child will be allowed to move and take the child with them.

4. If no petition against the move is filed, the parent who wants to move with the child is allowed to move as long as a new visitation schedule is in place.

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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.

