

UNMARRIED MOTHERS HAVE LEGAL CUSTODY

Southeastern Ohio Legal Services

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, **call us back** because the following information might not apply to you.

UNMARRIED MOTHERS AND LEGAL CUSTODY

On January 1, 1998, the law changed in Ohio. Now, an unmarried woman who gives birth to a child automatically has legal custody of the child unless a court has given 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 new law you, as an unmarried mother, 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.

This law is new. The courts might apply the law only to children born after January 1, 1998, but we do not believe that will happen. We believe that the Ohio General Assembly (which passed the law) meant to include all children born to unmarried women, before and after January 1, 1998. If you have a problem, please call us back.

COURTS CAN STILL DECIDE CUSTODY

If the child's father files a court action for custody, the new law does not mean the Court will automatically give you custody, even if the child has been living with you. The new 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 if it decides custody. One way 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 consider setting up a meaningful visitation schedule, which is reasonable and can document any concerns you may have about your child's health and safety if visitation is allowed. That way the father will not be able to prove that you would deny him visitation in the future. **Attached is a copy of the Court's Standard Orders of Visitation used in your court as a guide.** (Call back if this is not attached.) Following it may be the easiest way to set up a visitation schedule.

If paternity has not been established, many mothers feel that they have the right to deny visitation. That is true; 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 whom the father is. If visitation is unreasonably refused, it may be held against you.

PATERNITY AND CHILD SUPPORT

Establishing paternity does not affect 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. If the CSEA refuses to help you, call us back.

If you have further questions about how the new law applies to you, please call us back. If you receive court papers, call immediately. Feel free to show this sheet to anyone who has questions about custody of your child.