

# Legal Rights of Unmarried Fathers

The information in this pamphlet may help you if all of the following are true:

- You are the father of a child,
- You and the mother have never married each other,
- The mother of the child was not married to anyone else when the child was born,
- There are no court orders giving anyone custody of your child, and
- You want to know your rights regarding custody and visitation.

## Ohio Custody Law for Unmarried Parents

The law in Ohio says that an unmarried woman who gives birth to a child has legal custody of the child automatically, unless a court gives custody to someone else.

This is what the 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. (Ohio Revised Code Section 3109.042).

Under this law, your child's mother has legal custody of your child without having to go to court. That means she has the right to decide who sees the child and for how long, 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. If you do not have a court order for visitation, your child's mother can decide how often and when you see the child.

## What if the Mother Won't Allow Me to Visit My Child?

If the mother refuses to allow you to visit your child, you can file to ask the court to order a regular visitation schedule. If paternity has not been established, you may need to establish paternity in order to get a visitation order. The court may decide that the lack of paternity is not a good enough reason to deny visitation, especially if the mother agrees that you are the father. The court may also refuse to give you visitation until paternity is established.

Unless the mother has concerns for the health or safety of the child during visitation, she should consider allowing you reasonable visitation without a court order. If you do not already have a relationship with your child, it may be reasonable for visitation to be limited at the beginning while you and your child get to know each other. It is important to visit regularly to develop a strong relationship with your child. Keep a written record of all the times you and the mother talk about visitation, and the times when you actually visit the child.

## How Can I Establish Paternity?

If you have not taken any of the steps below to establish paternity, you may not be your child's legal father, even though you are named as the father on the birth certificate. There are several ways to establish paternity:

- **Sign an Acknowledgement of Paternity Affidavit:** You and the child's mother can each sign this form agreeing that you are the father. By signing the form, you take on the duty to support the child. This duty can be enforced against you with a child support order from the CSEA or a court. You can get an Acknowledgement of Paternity Affidavit at the hospital at the time of the child's birth, at the local health department, or a Child Support Enforcement Agency (CSEA).
- **Ask the CSEA to help you establish paternity:** Either you or the child's mother could ask your county child support enforcement agency (CSEA) to determine who the child's father is. The CSEA may order DNA testing to determine whether or not you are the child's father. They can also order either parent to pay child support.
- **File a complaint in court to establish paternity:** Either you or the child's mother could file in court to establish paternity. A court can order DNA testing to determine whether or not you are a child's father. The court can also order either parent to pay child support.

## How Can I Get Custody of My Child?

You can file in court to ask for custody of your child. It is best to either establish paternity of your child before seeking custody or seek custody and establish paternity at the same time. Even though the law gives the mother custody, once the father is known, the law says that the court must give each parent an equal chance 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, arranging for babysitters, and supporting the child financially, 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, the child's relationship with other family members, and which parent is more likely to allow the other parent visitation with the child in the future.

## Child Support and Visitation

Many fathers feel that if they pay child support, they have a right to visit their child. However, a child support order has no effect on an unmarried father's rights to visit his child. That you pay child support does not mean that the mother must allow you to see your child. If you have a court visitation order, you have a legal right to visit your child, even if you are unable to pay court-ordered child support.