



# Paternity and Child Custody

## *The Law*

The number of children living with one parent has increased dramatically in the past 20 years. In some cases the other parent is a spouse or former spouse. In other cases, the other parent has no formal relationship with the parent except that they are the parents of a child.

### **WHAT IS PATERNITY AND WHY IS IT IMPORTANT?**

Paternity is the recognition that a man is the father of a child. It is important because knowing who their legal father is may give children a sense of identity and emotional security. Children also benefit by knowing their biological, cultural, and medical history. Also, children with legal fathers may have rights to benefits from their fathers. These may include Social Security benefits, Veterans benefits, Tribal Recognition, Workers' Compensation, health care coverage, and inheritance rights.

A father has no right to custody or to visitation until paternity is established. Also, a child has a right to support from both parents until the child is 18 years old (20 years old if still in high school).

Fathers are asked to pay child support on behalf of their children in accordance with the Minnesota Child Support Guidelines. The state automatically withholds child support from the father's income, unless the mother says not to (and she does not receive public assistance). The father may be liable for expenses of childbirth and for past public benefits paid to the mother.

### **HOW IS PATERNITY ESTABLISHED?**

There are two ways to establish paternity, or fatherhood.

1. **Recognition of Parentage Process.** This is an informal process that does not require going to court. Both parents sign a sworn statement that the man is the child's father. The statement is filed with the state. Generally, if the mother is not married to someone else, this statement is final and becomes the basis for child support orders. The Recognition of Parentage does not give the father any right to custody or to visitation.

Either parent may change his/her mind within 30 days and take back the statement. After 30 days, the statement can be taken back by going to court with evidence that the man is not the father. Recognition of parentage can be done at any time. A lawyer is not required but will help explain how recognition of parentage will affect a person's rights.

2. **Paternal Hearing.** Sometimes the court must decide paternity. For example, one parent may not want to sign the statement naming the father, or more than one man may claim to be the father, or the mother may have been married to someone



else at the time the child was born. The court will look at evidence, including blood tests and the past relationship between the mother and the possible father. If a father wants to bring an action to deny paternity, in some cases this must be done before the child turns three.

### **WILL THE COUNTY ATTORNEY OR PUBLIC DEFENDER HELP ME?**

The County Attorney will help the custodial parent bring the paternity case to establish paternity, child support, medical support, and other child support matters only. The county attorney will not represent the custodial parent for custody or visitation issues. Both the mother and the father can ask the court to appoint an attorney to establish custody or visitation if they are unable to pay for an attorney.

If the mother and father have signed a Recognition of Parentage Form, neither parent will get free, court-appointed lawyers to work on custody or visitation.

### **HOW ARE CUSTODY AND VISITATION ESTABLISHED?**

If the parents weren't married when the child was conceived or born, the mother has sole custody until a court decides otherwise. If there is a paternity hearing, the court will decide custody, child support, and visitation based on the best interests of the child, the same as it would in a divorce. If the parents signed a Recognition of Parentage, the mother gets sole custody. Although the father has no right to visitation, the father has the right to ask the court for custody and /or visitation.

### **WHAT TYPES OF CUSTODY ARE THERE?**

1. **Legal custody** means the right to make major decisions for the child, including education, health care, and religious training. Legal custody can be individual or joint. Joint legal custody means that both parents have equal rights and responsibilities in making these major decisions.
2. **Physical custody and residence** means living with the child and having the routine daily care and control of the child. Joint physical custody means that the child lives part-time with one parent and part-time with the other. One parent may have sole physical custody even if the parents have joint legal custody.

### **HOW IS CUSTODY DECIDED?**

If both parents want custody of the child, the court looks at all important facts in deciding the best interests of the child. These include

- The wishes of each parent as to custody,
- The reasonable wishes of the child, if the child is old enough to decide,
- The amount each parents cares for the child
- The closeness of the relationship between each parent and the child
- The interaction of the child with each parent, brother and sister, and anyone else who is important to the child,



- The child's adjustment to home, school, and community
- The length of time the child has lived in a stable, satisfactory place and the need to stay in that place,
- The permanence, as a family unit, of the existing or proposed custodial home
- The mental and physical health of all individuals involved
- The ability of each parent to give the child love, affection, and guidance, and to continue educating and raising the child in the child's culture, religion, or creed
- The child's cultural background
- The effect on the child of any domestic abuse in the household and
- Whether each parent will encourage and permit frequent and continuing contact by the other parent with the child (except when there is domestic abuse).

The court must make detailed findings on all of the facts. The court must explain how it decided what were the best interests of the child. The court will not look at conduct of a parent that does not affect his or her relationship to the child. The court will look at evidence that a parent has made a false charge of sexual abuse, physical abuse or neglect.

### **CAN CUSTODY BE CHANGED?**

Yes. The court can change a custody order if the situation of the child or the parties has changed and a new order is needed to serve the best interests of the child.

Portions of this law sheet were taken from "Establishing Paternity and Deciding Child Custody", published by Legal Aid Society of Minneapolis.



5. Define the following terms:
- Legal custody:
  
  
  
  
  
  
  
  
  
  
  - Joint legal custody:
  
  
  
  
  
  
  
  
  
  
  - Physical custody and residence:
  
  
  
  
  
  
  
  
  
  
  - Joint physical custody:
6. What are the best interests of the child in determining custody?
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7. When can the court change custody?

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## *Activity: You Decide*

### ANSWER YES OR NO TO THE FOLLOWING QUESTIONS.

- \_\_\_\_\_ 1. Both parents sign a statement saying that the man is the child's father. Does this establish paternity?
- \_\_\_\_\_ 2. A Recognition of Parentage statement has been signed. Does this mean that the father has rights to custody and/or visitation?
- \_\_\_\_\_ 3. The man has evidence that he is not the father of the baby. It is 15 days after he signed the Recognition of Parentage form. He wants to officially take back his statement. Can he do this?
- \_\_\_\_\_ 4. If the father of the baby denies paternity, can you bring the case to court?
- \_\_\_\_\_ 5. You are having financial problems and the father of your baby is not paying child support. Can you get legal support from the county attorney to establish paternity?
- \_\_\_\_\_ 6. Does the father of the baby have a right to custody or visitation if he has denied paternity?
- \_\_\_\_\_ 7. Once paternity has been established, does the father have a right to refuse to pay child support?
- \_\_\_\_\_ 8. Can the state legally withhold child support from the father's income?
- \_\_\_\_\_ 9. If the mother receives public assistance, does she have any say in whether or not the state or county withholds money from the father?
- \_\_\_\_\_ 10. If you have legal custody of a child do you have the right to make decisions regarding his or her education?
- \_\_\_\_\_ 11. Do both parents have equal rights regarding the decisions made about the child if they have joint legal custody?
- \_\_\_\_\_ 12. Can custody be changed if the child's present home endangers the child's physical or emotional health?

# Paternity and Child Custody

## *Activity: Each One Teach One*

1. The number of children living with one parent has increased dramatically in the past 20 years.
2. Paternity is the recognition that a man is the father of a child.
3. Children with legal fathers may have rights to benefits from their fathers.
4. Children benefit from knowing their biological, cultural, and medical history.
5. If the mother and father of a child are married, it is presumed that the husband is the father of the child. Paternity does not need to be proven.
6. If paternity is not established, the father has no right to visitation or custody.
7. Children have the right to support from both parents until they 18 years old. (20 years old if they are in high school.)
8. If the mother receives public assistance, child support will be withheld automatically from the father's paycheck.
9. A Recognition of Parentage is statement that the man is the child's father signed by both parents.
10. A Recognition of Parentage does not give the father any rights to custody or visitation.
11. A Recognition of Parentage does not involve the court but is filed with the state.
12. A father might be asked to pay childbirth expenses.
13. A paternity hearing is held when the court must decide paternity.
14. Paternity is proven by blood tests and the relationship between mother and father.
15. If the mother and father were not married when the child was conceived or born, the mom has sole custody until a court decides otherwise.
16. Legal custody means the right to make major decisions for the child, including education, health care, and religious training.
17. Legal custody can be individual or shared.

18. Physical custody means living with the child and having control over routine daily care of the child.
19. Joint physical custody means that the child lives part-time one mom and part-time with dad.
20. The court looks at lots of facts in determining who should have custody.
21. When deciding custody, the court considers the wishes of each parent.
22. When deciding custody, the court considers the wishes of the child if the child is old enough to decide.
23. When deciding custody, the court considers the amount of time each parent cares for the child.
24. When deciding custody, the court looks at the relationship between child and parents and brothers and sisters.
25. When deciding custody, the court looks at the child's adjustment to home, school, and community.
26. When deciding custody, the court looks at the stability of the existing or proposed custodial home.
27. When deciding custody, the court looks at the mental and physical health of all people involved and any charges of child abuse.
28. When deciding custody, the court looks at the child's cultural background.
29. When deciding custody, the court looks at the ability of mom and dad to give love and affection.