

Unwed Mothers Have Legal Rights

"If your parents didn't have children, chances are you won't either." - Dick Cavett, American television talk show host

"The phrase 'working mother' is redundant." - Jane Sellman, Baltimore author

Most Tennessee babies are still born to married mothers – for now. There is a steady upward trend, however, in the number of children born to unwed mothers. During 2005, 40.1 percent of all Tennessee babies were born to unmarried mothers.

I am concerned for these children. This column discusses the legal rights of unwed mothers.

Q. Who has custody of a child born to an unwed mother?

Tennessee law says that an unwed mother automatically has total legal custody of a child born to her, unless a court later issues an order that says otherwise. Even if the biological father's name is on the birth certificate, the mother has custody.

Unless a court order says otherwise, the mother has the responsibility to make decisions about the child's medical care, religious upbringing, education, and extracurricular activities – and the mother also decides whether and how the father may visit the child.

The juvenile court in each county has the power to make decisions regarding custody and visitation as to the child of an unwed mother living in that county. A father can ask the juvenile court for parenting privileges.

Q. How can an unwed mother get child support for her child?

Every county has a free child support enforcement program. An unwed mother – as well as a married parent who is not receiving support – can contact the local child support office and get help in getting a child support order put into place.

Q. What if the father or some other relative decides not to return such a child to the child's mother?

Refusing to return a child born out of wedlock to the mother is a serious crime called custodial interference.

Violating the mother's rights by taking a child out of Tennessee, or harboring or hiding a child, or refusing to return a child, or helping someone else do these things is a Class E felony (1 to 6 years in prison, \$3,000 fine). If the child is returned voluntarily after law enforcement is contacted, then the violation of the mother's rightful custody is a Class A misdemeanor (11 months, 29 days in jail, \$2,500 fine).

Q. Does an unwed mother need an order to show that she has custody?

No. If there is any question, a copy of the child's birth certificate and the unwed mother's proof of identification should be adequate.

Q. My unmarried friend's boyfriend took their baby and would not give the child back to the mother. What can she do?

Contact law enforcement immediately. Stay as calm as possible and explain the situation. A well-trained officer will recognize that an unwed mother has full legal custody as long as there is no court order that says otherwise. Tennessee law allows officers to first make a request – and then take action, if necessary – to return the child to the mother.

To encourage officers to help unmarried mothers in such cases, Tennessee's custodial interference law specifically refers to the law that says an unwed mother has full custody.

by Jim Hawkins, Managing Attorney, Gallatin office, Legal Aid Society

Note: This column is not intended to take the place of legal advice. All cases are different and need individual attention. Consult with a private attorney of your choice to review the facts and law specific to your case.

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