



# Who has Custody?

## I am married but there is no custody order

If there is no court order granting custody, you and your spouse have **equal rights** to physical and legal custody of your children.

There is one important exception: If there are children born **before** the marriage and there is no adoption or custody order, the **mother has sole custody** until a court says she does not have custody.

**Legal custody** is the right to make the major decisions about the children. For example, decisions about schooling, religious upbringing, and medical care.

**Physical custody** means where the children live and which parent makes the routine daily decisions.

## I am not married to the other parent and there is no custody order

- If you are the **mother**, you have sole legal and physical custody of your child unless a court order says differently.
- If you are the biological **father**, you do not have legal rights to custody or parenting time (visitation) with the child until a court order says you do.

## What if we signed a Recognition of Parentage (ROP)?

The mother still has sole legal and physical custody.

A Recognition of Parentage:

- DOES NOT give legal or physical custody
- DOES NOT give parenting time
- DOES mean a Judge can order child support



BUT, a Recognition of Parentage **does** prove **who** the legal father is. Then he can go to court to ask for legal custody, physical custody, and/or parenting time.

## How do I get a court order giving me custody or parenting time?

- **If you are married**, you can ask a Judge to decide which parent gets custody by starting a divorce case or legal separation.
- **If you are not married and you signed a Recognition Of Parentage**, you can start a court case to decide custody, parenting time and child support.
- **If you are not married and you have not signed a ROP**, the mother, the biological father, or the County can start a court case. This is called a paternity action. Both parents have a right to a free court appointed attorney if they cannot afford one.
- **If you or your children are victims of abuse and you fear for your safety or your children's safety**, you can apply for an Order for Protection (OFP) and ask for custody. It is best for you get help from a domestic violence counselor or attorney before requesting custody in an OFP case.

To find a domestic violence counselor near you call the domestic Violence Crisis Line at 1-866-223-1111.

To find an attorney near you go to [www.lawhelpmn.org](http://www.lawhelpmn.org)

**Custody and parenting time law is complicated. It is always best to see a lawyer for advice.**



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