



# domestic violence

CHICAGO POLICE DEPARTMENT

DOMESTIC VIOLENCE IN CHICAGO

NOVEMBER 2009

## IN THIS ISSUE

- Resolving Conflicts Regarding Access to Children
- Who is a Legal Parent in Illinois?
- Rights of Parents to Have Access to Their Children
- No Authority For Officers to Enforce Visitation Orders

## FAQS

# Resolving Conflicts Between Parents

**P**olice officers are often called on to resolve conflicts between parents regarding their children. Many of those situations are civil in nature as no crime has been committed. Parental Child Abduction is a Class 4 felony in Illinois, but the statute may be confusing to officers as the statute combines both criminal and family law concepts.

This month's newsletter defines who is a legal parent and has rights and responsibility to a child. Next month's newsletter will define Child Abduction under Illinois law as well as provide key civil and criminal concepts to assist officers in enforcing the statute

### WHO IS A LEGAL PARENT IN ILLINOIS?

Under Illinois law a person may be a biological parent of a child but if that parent is not recognized as a "legal parent" that person has no rights or responsibilities to that child.

**A woman who gives birth to a child** and who is named as such on the child's birth certificate is automatically a legal parent.

A man who is **married to a woman at the time a child is conceived or born** is presumed to be the legal father without further action being taken. Absent a court order, both parents have equal rights and responsibilities to the child. In next month's newsletter, however, you will learn that this isn't an unlimited right.

In some cases, the husband is not the biological parent of the child. He will remain a legal father unless both parties complete a Denial of Paternity form and submit it to the state or the relationship is terminated by court order.

An unwed father has no rights or responsibilities to a child unless a "Father and Child Relationship" has been legally established. The Illinois Parentage Act of 1984 provides several ways to establish parentage:

- Both parties can complete a **Voluntary Acknowledge of Paternity** form and submit it to the state.<sup>1</sup> By completing this form, both parties acknowledge the man as the biological father and give up the right to DNA testing. The form is usually completed in the hospital after the birth of the child but can be completed at any time. Either party has the right to change their mind and rescind this form but only if they complete a Rescission of Voluntary Acknowledgment of Paternity form and submit it to the state within 60 days. Both forms are available through the Office of the County Clerk at the County Building.
- Either party may **initiate court action to establish a "Father and Child Relationship"** to the child. The party bringing the case has the burden of proving that the man is the biological father of the child. No rights or responsibilities are attached until a court order is entered establishing the relationship.<sup>2</sup>



Office of the Superintendent,  
Domestic Violence Program

- If the mother is receiving public assistance, the Illinois Department of Human Services may seek to establish a father and child relationship in order to force the father to pay child support. The alleged father may be summoned to an administrative hearing and if he acknowledges that he is the father and waives the right to DNA testing, either an **administrative order** will be issued establishing the relationship or a Voluntary Acknowledgement of Paternity form completed.<sup>3</sup>

Since January 1, 1996, an unwed father's parentage has to be established in one of the ways listed above in order for his name to be listed on the child's birth certificate. Note, however, that a father listed on a birth certificate before that date may not be a legal parent and birth certificates issued outside of the state of Illinois cannot be relied as proof of parentage.

### RESOLVING CONFLICTS

When the parents were married and the father is presumed to be the legal father, both parents have equal rights absent a court order. When a parent has been granted sole custody, the court has granted that parent superior rights to the child and the non-custodial parent's rights are limited to what is granted in the court order.

When called on to resolve conflicts between unwed parents involving access or possession of a child, there are two key points to remember:

- 1) If parentage has not been established under the law, the father has NO rights to the child whatsoever.
- 2) Even where an unwed father has established parentage under Illinois law, the father does not have equal rights to the child. Under both the Illinois Parentage Act of

1984 and the Child Abduction statute, if parentage has been established and the order does not contain a custody provision, the unwed mother is considered to be the lawful custodian of the child.<sup>4</sup> The father has the right to seek visitation or custody but is not afforded these rights until granted by court order.

Parents often seek assistance in enforcing visitation orders. Note that officers have no authority to enforce civil orders unless a statute grants that authority. Officers investigating a Child Abduction complaint are granted the authority to seize a child and return the child to the parent who has the right to have the child.<sup>5</sup> **OFFICERS DO NOT HAVE THE AUTHORITY TO ENFORCE VISITATION ORDERS.** An officer who orders or coerces a parent to turn over a child for visitation opens the door to liability for any harm that comes to the child as a result of being in that parent's care.

For additional information regarding domestic violence issues or topics to be discussed, contact Sergeant Maude Noflin of the **Domestic Violence Program at: 312-745-6340 or FAX: 312- 745-6856.**

If you or someone you know needs immediate assistance, call 911.

*The City of Chicago Domestic Violence Help Line  
number is:  
1-877-863-6338 or 1-877-863-6339 (TTY)*

<sup>1</sup>750 ILCS 45/6(a).

<sup>2</sup>750 ILCS 45/7.

<sup>3</sup>750 ILCS 45/4.1.

<sup>4</sup>750 ILCS 45/14 (2), 720ILCS 5/10-5 (a)(3).

<sup>5</sup>720 ILCS 5/10-5 (i).

# domestic violence

CHICAGO POLICE DEPARTMENT