



**PRAIRIE STATE LEGAL SERVICES**

*Equal Access to Justice*

## **Family Law Basics for Unmarried Parents**

Legal parentage, decision-making and caretaking responsibilities, and child support for your minor child

# Our goals today

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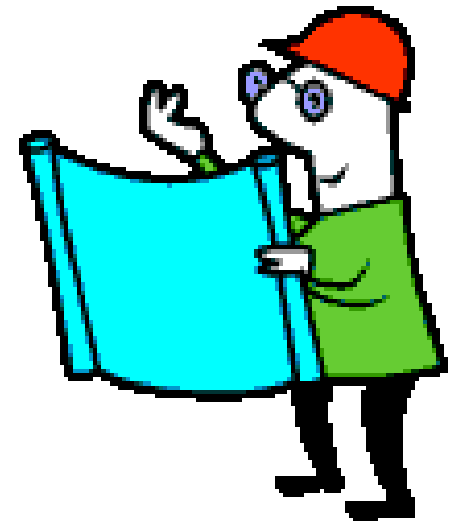
- ▶ **Legal information only**
  - ▶ We cannot give you legal advice specific to your case
- ▶ **Every case is different**
- ▶ **We will be discussing family law for unmarried parents; we will not discuss divorce**
- ▶ **We will be discussing Illinois law only**



# Topics

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- ▶ Legal parentage
- ▶ Decision-making and care of your minor child
- ▶ Grandparent visitation
- ▶ Child Support
- ▶ Tips



# New law changes!

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- ▶ This presentation is based on the law as of 2016
- ▶ Many of Illinois' laws about parentage, child support, decision-making and caretaking rights for minor children changed on January 1, 2016
- ▶ Some of the terms used in the new law are different



# Do the new laws apply to my case?

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## ▶ The new laws apply to:

- ▶ Cases started on or after January 1, 2016
- ▶ Parts of cases that started before 2016 but were not finished by 2016
- ▶ Cases that were finished before 2016, if someone later goes back to court to change or enforce a court order





# Legal parentage

What is it and why does it matter?



# What is parentage?

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- ▶ Parentage is the legal relationship between a parent and a child
  - ▶ Paternity is the legal relationship between a father and his child
- ▶ The birth mother's parentage is usually established by her giving birth
- ▶ The other parent's parentage must be legally established



# Why does legal parentage matter?

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- ▶ If a person's legal parentage is not established, that person does not have any legal rights or obligations to the child
- ▶ That person is not entitled to make decisions for his or her child or to spend time with the child, and is not required to pay child support





# How is parentage established in IL?

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1. The person was married to the child's biological mother at the time of birth, conception, or at any point during the pregnancy;
2. The parents marry after the birth of the child, and the person is listed on the birth certificate with his or her written consent;
3. Court order

For fathers only, paternity can also be established by:

4. Voluntary Acknowledgment of Paternity (VAP) form, or
  5. Department of Healthcare and Family Services (HFS) or public aid order
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# What is a Voluntary Acknowledgment of Paternity (VAP)?

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- ▶ A VAP is a form signed by both parents acknowledging that a man is the father of the child
- ▶ Just one method of legally establishing paternity
- ▶ Often signed at the hospital, but doesn't have to be



# When does the VAP take effect?

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- ▶ A VAP can be signed before the child is born
- ▶ After signing, the form gets filed with the IL Department of Public Health and HFS
- ▶ It takes effect when the child is born OR when it gets filed with HFS, whichever is later



# What if the mother is married to someone else?

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- ▶ The mother and the biological father can sign the VAP even if the mother is married to someone else at the time of the child's birth or during the pregnancy
- ▶ BUT the mother and her spouse must also sign a “denial of parentage” form
- ▶ The VAP isn't effective unless the biological father signs the VAP and the mother's spouse signs the denial of parentage form



# What if the father listed on the VAP isn't really the father?

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- ▶ The VAP is a binding legal document with serious consequences!
- ▶ Don't sign the VAP if you are not sure – wait for DNA testing!



# What if I change my mind?

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- ▶ At most, you have only 60 days from the effective date of the VAP to change your mind and rescind it
  - ▶ The deadline might be shorter if a child support case is started before the 60 days are up
- ▶ Either parent can rescind the VAP within the 60 day time period
- ▶ To rescind, sign a rescission form and file it with HFS by the deadline



# What if I miss the 60 day deadline to rescind the VAP?

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- ▶ After the 60 day deadline, paternity can only be changed by court order and only in very limited circumstances
  - ▶ Fact that the person listed on the VAP is not the biological father is usually not enough
- ▶ A VAP can usually only be challenged within two years after it becomes effective
  - ▶ A person who was a minor when he or she signed the VAP may have two years from the date he or she turns 18 to go to court to challenge the VAP



What if the other parent's name is on the birth certificate? Is parentage legally established?

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- ▶ **Yes, if the child was born in Illinois after August 9, 1996**
  - ▶ Beginning August 9, 1996, only the legal parents can be listed on the birth certificate in Illinois





# Establishing parentage in court

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- ▶ There are time limits for filing a parentage case
  - ▶ These vary depending on numerous factors
- ▶ Court can order DNA testing
  - ▶ The party who asks for DNA testing usually pays for it
  - ▶ The court may split the costs between the parties
  - ▶ If your court fees have been waived, you can ask for the county to pay the cost of the test



# Do I have to get a court parentage order?

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- ▶ A court order is only one way to establish parentage
- ▶ If a parent's name is on the birth certificate or if a father signed the VAP, this means parentage has been officially established and you do not need a court order to establish parentage



# What if I am served with parentage court papers?

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- ▶ **If you are the alleged parent (usually dad):**
  - ▶ If you do not respond to the court papers, the court can decide you are the parent without a DNA test and without your participation
  - ▶ The court might order you to pay child support
- ▶ **If you are already the legal parent of the child (usually mom):**
  - ▶ The court can make a parentage decision and enter orders about decision-making, parenting time, and child support without your participation





# Allocation of Parental Responsibility

Decision-making and care of minor children



# What is allocation of parental responsibility?

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- ▶ The 2016 laws replace the terms “custody” and “visitation” with the new term “**allocation of parental responsibilities**”
- ▶ Allocation of parental responsibilities includes:
  - ▶ **Significant decision-making responsibility**: who makes decisions for the child and how decisions are made
  - ▶ **Parenting time**: the time that each parent spends with the child
- ▶ A parent who wants the right to make decisions for a child or to spend time with a child will file a “**Petition for Allocation of Parental Responsibility**”



# What about custody and visitation?

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- ▶ The word “**custody**” is still used in some parts of the law
  - ▶ For example, the parent who has more parenting time is considered to have custody for school enrollment purposes
  
- ▶ The word “**visitation**” now refers to the time a non-parent, such as a grandparent, spends with the child



# What is significant decision-making responsibility?

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- ▶ **Significant decision-making responsibility** refers to decisions for your child in the areas of:
  - ▶ Education
  - ▶ Healthcare
  - ▶ Religion (if there is a history of religious upbringing for the child)
  - ▶ Extracurricular activities
- ▶ It does not include most “everyday” decisions, like what a child eats or what time he goes to bed



# Who makes decisions for the child?

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- ▶ The court can give significant decision-making responsibility to both or either parent in each area
  - ▶ For example, the court might say the parents have to work together to make education decision for the child, but that only the mother can make medical decisions
- ▶ Everyday decisions are made by whichever parent is caring for the child at that time





# What is parenting time?

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- ▶ **Parenting time** refers to the time the child spends with *both* parents
- ▶ Usually, but not always, the child lives primarily with one parent and sees the other parent regularly



# Parenting time schedules

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- ▶ In most cases, the court will order a specific schedule for when the child will be with each parent, as well as transportation arrangements
  - ▶ A set schedule can help avoid problems later
- ▶ There is no automatic or preferred schedule
  - ▶ Amount of parenting time and schedule varies by case
  - ▶ Parenting time does not have to be overnight



# What is a parenting plan?

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- ▶ Each parent must file a proposed parenting plan in every allocation of parental responsibilities case within 120 days of filing the case or receiving the court papers
  - ▶ If the parents reach an agreement they can file a joint parenting plan
- ▶ The plan has to include a lot of specific information, including:
  - ▶ How much time the child will spend with each parent (parenting time schedule)
  - ▶ Who will make decisions for the child in the areas of education, healthcare, religion, and extracurricular activities and how these decisions will be made
  - ▶ How the parents will handle disputes
- ▶ Look at a sample plan to make sure you cover everything!



# Do I need a court order allocating parental responsibilities?

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- ▶ You are not required to have a court order
- ▶ But without a court order:
  - ▶ It may not be clear who has the right to make decisions for the child or to care for the child
  - ▶ It may be hard to get the court or the police to help you if you have a dispute



# How does a judge decide how to allocate parental responsibilities?

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- ▶ If the parents agree on allocation of parental responsibilities, the court will usually approve their agreement
- ▶ If the parents don't agree, the court makes a decision based on the “best interests” of the child
  - ▶ No presumption in favor of mom



# What are the best interest factors?

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- ▶ **Best interests includes things like:**
  - ▶ The wishes of the parents
  - ▶ The wishes of the child (if the child is older)
  - ▶ The adjustment of the child to his home and community
  - ▶ The willingness of each parent to allow a close relationship with the other parent
  - ▶ Any history of abuse
  - ▶ The mental and physical health of all individuals involved
  - ▶ For decision-making, the history of decision-making and ability of the parents to cooperate to make decisions
  - ▶ For parenting time, the child's relationship with each parent and the recent history of how much time each parent spends caring for the child



## Can a parent who doesn't have decision-making responsibility still get parenting time?

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- ▶ Yes!
- ▶ If a parent asks for parenting time in court, the judge will order parenting time unless the judge finds that parenting time should be restricted or supervised
- ▶ Some judges may require the parent asking for parenting time to prove that it is in the child's best interests
  - ▶ The relationship between a parent and child is the most important best interest factor
  - ▶ Ask for a parenting time order sooner rather than later if there are problems



# Can parenting time be restricted?

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- ▶ A judge will restrict parenting time if the child's health would be seriously endangered or if the parent's conduct seriously endangered the child
- ▶ Restrictions can include:
  - ▶ Supervised parenting time
  - ▶ Prohibition against using alcohol or drugs during or before parenting time
  - ▶ Restrictions on who can be present during parenting time
  - ▶ Other restrictions to protect the child
- ▶ Restricted parenting time is usually disfavored and temporary
  - ▶ "He's irresponsible" isn't a good enough reason for restricted parenting time





# What about supervised parenting time?

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- ▶ Supervised parenting time is a type of restricted parenting time
- ▶ Arrangements can be very difficult
  - ▶ Must have appropriate supervisor, location, etc.
  - ▶ Family Visitation Center of Lake County
- ▶ Think about other options such as short visits, safe place for exchange, public place for visit, etc.



# Which parent has responsibility if there is no court order?

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- ▶ If there are no court orders of any kind and the child lives with the mother, the law presumes the mom has full parental responsibilities for the child
- ▶ If there is a parentage order:
  - ▶ And it orders one parent to pay child support or awards parenting time, this is considered an order giving full parental responsibilities to the other parent
  - ▶ If there is no child support or parenting time order, the law presumes mom has full parental responsibilities for the child, unless the child has lived with the other parent for at least 6 months
- ▶ Police usually won't remove a child from the current situation without an allocation of parental responsibilities order



# Can I change an allocation order?

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- ▶ If the most recent custody, visitation, or allocation order is more than two years old:
  - ▶ You must show there has been change in circumstances since the last order and that modification is in the best interests of the children
  - ▶ Some changes can be made without showing a change in circumstances, like minor changes or changes that reflect the actual care arrangement



# Can I change an order that is less than two years old?

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- ▶ If the most recent custody, visitation, or allocation order is less than two years old:
  - ▶ You must first show that the child's present environment may seriously endanger his physical, mental, moral, or emotional health
- ▶ If a parent has engaged in conduct that seriously endangered the child's health or development, the court can enter orders to protect the child, including orders restricting parenting time or decision making



# What if I want to move?

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- ▶ If there are no court orders, the parent who is presumed to have all of the parental responsibilities can move with the child without permission from the court or the other parent
- ▶ BUT, keep in mind a move might encourage the other parent to go to court to ask for an allocation order
  - ▶ It is possible that a court may require the parent who moved to return if it is in the best interests of the child



# What if there is a court order?

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- ▶ If there is a court order about the child, then it depends how far you are moving
- ▶ If the parent with the majority of parenting time is moving:
  - ▶ **More than 25 miles away** from home if the original home is in Cook or the collar counties, or if the move is out of state; OR
  - ▶ **More than 50 miles away** from home within Illinois if the original home is not in Cook or the collar countiesthen the move is called a **relocation**, and the parent must go through a special process to get permission from the other parent or the court
- ▶ This is a big change from the old law, which allowed moves within the state with no restrictions but required court permission for all out of state moves





# Grandparent visitation

# Can grandparents get visitation?

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- ▶ Grandparents can get court ordered visitation in some limited circumstances, including when:
  - ▶ One of the parents has unreasonably denied visitation; AND
  - ▶ The parents of the child are not married and do not live together
- ▶ A grandparent who is related through the child's father can only get visitation if legal paternity has been established
- ▶ The grandparent must prove that the parent's decisions about visitation are harmful to the child's mental, physical, or emotional health





# What if I want to change a grandparent visitation order?

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## ▶ If you are the parent:

- ▶ You may petition to modify at any time based on changed circumstances when necessary to promote the child's best interests

## ▶ If you are the grandparent:

- ▶ And the most recent visitation order is more than two years old, you must show there has been a change in circumstances since the last order and modification is in the best interests of the children
- ▶ If the most recent parenting time order is less than two years old, you must show that the child's present environment may seriously endanger his physical, mental, moral, or emotional health





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# Child Support

# Child support basics

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- ▶ Legal parentage must be established before child support is ordered
- ▶ Either parent can be ordered to pay child support
  - ▶ Generally, the parent who does not have the majority of parenting time is ordered to pay support to the parent who has the majority of parenting time.
  - ▶ Minor parents can be ordered to pay child support
- ▶ A child support obligation usually ends when the child turns 18 or graduates from high school, whichever is later



# How do I get child support in Illinois?

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- ▶ **File a Petition for Child Support yourself**
  - ▶ If there is an existing parentage or allocation of parental responsibilities case, file the Petition for Child Support in the same case
  - ▶ The court will decide parentage before ordering child support
- ▶ **Or, you can ask Child Support Enforcement Services (CSE) to help you get child support**



# What is CSE? How can it help me?

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- ▶ **CSE is a state program that can help you:**
  - ▶ Get an order for parentage and child support
  - ▶ Modify or enforce a child support order
  - ▶ Work with similar agencies in other states to get an order if the other parent doesn't have enough connections to Illinois to get an order here
  
- ▶ **CSE can help any parent**
  - ▶ If you get certain public benefits, you may be required to work with CSE
  
- ▶ **CSE will not represent you to get an allocation of parental responsibilities order**



# How is child support calculated?

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- ▶ IL courts usually follow these “statutory guidelines:”

NUMBER OF CHILDREN	Percent of Supporting Parent's Net Income
1	20%
2	28%
3	32%
4	40%
5	45%
6 or more	50%

- ▶ The court can order more or less in rare circumstances
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# What is net income?

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- ▶ Income is all income from all sources
- ▶ Net income is gross income minus the following:
  - ▶ Federal income tax
  - ▶ State income tax
  - ▶ FICA
  - ▶ Mandatory retirement contributions
  - ▶ Union dues
  - ▶ Insurance premiums
  - ▶ Student loan payments
  - ▶ Prior obligations of support or maintenance/alimony actually paid under a court order



# Additional support

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- ▶ **Court can order additional payments for:**
  - ▶ Healthcare costs not covered by insurance
  - ▶ Childcare costs that allow a parent to work or attend school
  - ▶ Education costs
  - ▶ Extracurricular activities





# What if the supporting parent is unemployed?

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- ▶ The court can order the supporting parent to perform a job search
- ▶ The court can order a parent to pay support even if he has no income
  - ▶ Usually a very small amount like \$10/week



# What if the supporting parent gets SSD or SSI?

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- ▶ The court can order a parent to pay child support from Social Security Disability (SSD) benefits
  - ▶ If the child receives SSD dependent benefits on the Social Security account of the supporting parent, the dependent benefit usually counts as the child support payment
- ▶ The court cannot order a parent to pay child support from Supplemental Security Income (SSI) benefits



# What if the child or the parent who gets support gets SSI?

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- ▶ If the child receives SSI benefits, child support counts as income to the child for the SSI program
  - ▶ The parent who receives support must report the child support income to Social Security on the child's behalf
  - ▶ The child's SSI payment may be reduced
- ▶ If the parent who gets child support gets SSI, child support does not count as income to the parent



# How is a child support order enforced?

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- ▶ You can enforce an order on your own, or ask CSE for help
- ▶ **Notice to Withhold Income**
  - ▶ Requires employer to withhold income directly from parent's paycheck
  - ▶ Employer can be fined for failure to follow the Notice to Withhold
- ▶ **File a Petition for Rule to Show Cause in your child support case**
  - ▶ Requires the supporting parent to come to court to explain why he or she is not paying child support
  - ▶ If he or she doesn't have a good reason, the judge can hold the parent in contempt



# What if child support isn't paid?

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- ▶ Interest accrues on unpaid child support at a rate of 9%
- ▶ State or a judge can:
  - ▶ Withhold money from unemployment insurance benefits
  - ▶ Intercept your federal and state income tax refunds and lottery winnings
  - ▶ Place liens on your real property
  - ▶ Freeze your bank accounts
  - ▶ Suspend your driver's license
  - ▶ Deny your passport application
  - ▶ Send you to jail
  - ▶ Some of these can only be done if CSE is enforcing the order



I lost my job and can't afford to pay support.  
What should I do?

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- ▶ File a Petition to Modify Support right away
- ▶ The judge can only adjust your child support as far back as the date you file the Petition



# How do I change a child support order?

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- ▶ Child support is not automatically recalculated because of job loss, change in pay, etc.
- ▶ File a Petition to Modify Child Support in the same court case in which the original child support order was entered
  - ▶ Must show there has been a substantial change in circumstances



# Child support and parenting time

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- ▶ No connection between child support and parenting time
- ▶ A judge will not deny or restrict parenting time because a parent doesn't pay child support
- ▶ Likewise, a parent can be ordered to pay child support even if the parent doesn't have any parenting time or contact with the child







## Tips for your family law case

# Filing a court case

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- ▶ You are not required to have a lawyer
- ▶ Filing fee for most Lake County family law cases is \$273.00
  - ▶ No filing fee if the parents have signed a VAP and are filing to set up child support by agreement
- ▶ If you don't have enough money to pay the court fees, you can ask the court to let you file for free
  - ▶ Application for Waiver of Court Fees



# Notice and deadlines

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- ▶ There are rules you must follow to notify the other parent of your court case
- ▶ If the other parent files a case against you, there are deadlines for you to respond
- ▶ This presentation does not cover those topics
  - ▶ You should talk to a lawyer about the rules and deadlines that apply in your case



# How do I get a court order in IL?

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- ▶ File a petition telling the court what you want and why
  - ▶ For example, file a Petition to Establish Child Support if you want child support
  - ▶ If the case involves decision-making for a child or parenting time, you must file in the county where the child lives; otherwise, file in the county where either mom or dad lives
- ▶ An IL court can usually decide parentage or child support only if the other parent has some connections to IL
- ▶ An IL court can usually decide issues involving care or decision-making for a child only if the child has lived in IL for at least 6 months (or since birth if the child is under 6 months)



# Other court requirements

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- ▶ A court approved parenting class is required in allocation of parental responsibilities cases
- ▶ The judge may require you to go to mediation if you can't agree on decision-making or parenting time



# Tips

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- ▶ Be careful what you post on social media!
- ▶ Document disputes and schedules
- ▶ Act early



# Public benefits

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- ▶ Changes in household size, income, and expenses can impact eligibility for public benefits like SSI, TANF, food stamps, Medicaid, and public housing
- ▶ Report all changes immediately!





Additional resources





# I still need help!

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- ▶ CSE: 1-800-447-4278 or 227A N. Genesee St., Waukegan, IL 60085: <http://www.childsupportillinois.com/>
- ▶ [www.illinoislegalaid.org](http://www.illinoislegalaid.org)
  - ▶ Legal information and court forms
- ▶ Lake County court forms:  
<http://www.lakecountycircuitclerk.org/court-forms>
- ▶ Statewide court forms:  
<http://www.illinoiscourts.gov/Forms/approved/default.asp>



# I still need help!

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## ▶ Prairie State Legal Services

- ▶ Apply by phone: 800-531-7057
- ▶ Apply online: [www.pslegal.org](http://www.pslegal.org)
- ▶ Help with parentage, allocation of parental responsibility, and support is usually limited to telephone advice

## ▶ Illinois State Bar Association Lawyer Referral

- ▶ 30 minute consultation for \$25 or less
- ▶ 1-800-922-8757
- ▶ <http://ilf.isba.org/search.html>



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- ▶ Thank you for attending! Please complete the evaluation before you leave.

